

5 call, but I wanted to welcome everyone to our permitting
6 workshop. And I know I join my colleagues in being
7 really happy that we have all day to explore one of the
8 policy issues that's really important to us.

9 So thank you all, and I will turn things over to
10 Ms. Nauman.

11 MS. NAUMAN: Thank you. Good morning, Madam
12 Chairman and Board Members. For the record, Julie Nauman
13 with the Permitting and Enforcement Division. Actually
14 on behalf of the Permitting and Enforcement Division, I
15 would really like to express our appreciation to the
16 Board for giving us this opportunity to conduct a
17 workshop on the permit review process.

18 Many of you know from discussions with me
19 individually and in Board settings that for a very long
20 time we have wanted to come forward to the Board and
21 present an opportunity to give you a broad overview of
22 the various components of the permit process and many of
23 the nuances involved in that process. In addition, over
24 the course of the last 12 months or so as you've been
25 conducting your normal monthly business, you have

1 identified a number of policy issues that you have
2 requested us to return to you for further exploration and
3 discussion, and what we are planning to do in this
4 workshop is to incorporate the discussion of those policy
5 issues into the review of the permit process itself.

6 Let me just remind you of some of those. Last
7 August when our former Chairman, Mr. Eaton, was speaking
8 to the Local Enforcement Agency conference, he spoke to
9 them about an issue that he has mentioned several times
10 and that's the issue of completeness of applications.

11 When we were in Quincy at our meeting last
12 August, Senator Roberti requested that we return with a
13 discussion item on our long-term violation policy. In
14 October, Ms. Moulton-Patterson, again reflecting some
15 statements that she and Mr. Roberti had stated in earlier
16 settings, asked staff to return with further information
17 about noticing and how noticing at the local level is
18 handled as it relates to the permitting process for solid
19 waste facilities. And later in October, there was
20 further discussion about the long-term violation policy
21 and a practice of purchasing land to remediate landfill
22 gas and you asked for a separate discussion on that item.

23 And for a number of months we have been
24 continuing to talk about the issue of conformance and we
25 have reserved a block of time in this afternoon's session

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1 to review with you the outcome of the workshops that have
2 been conducted and the options that staff would like to
3 present to you. So we've incorporated those into today's
4 workshop.

5 Let me just take a moment to review with you the
6 agenda. This is actually a two-day workshop. The second
7 day of our workshop is scheduled for August 9th. Today
8 we'll be covering that part of the process that relates
9 to the local process wherein the LEA is accepting and
10 reviewing the applications submitted by the operator.
11 We'll review with you the local approval process which
12 also involves CEQA, the California Environmental Quality
13 Act review, and you'll notice on this little diagram that
14 we have, which we'll keep up during the day and the area

15 where we are at at each time will be highlighted in red
16 so that you in the audience can follow along with this
17 continuum.

18 What you'll notice that we have done is
19 separated process steps from issue discussion. So we
20 will proceed with a staff presentation and in some
21 instances assisted by our Local Enforcement Agencies to
22 review various steps in the process.

23 We will then move into an issue discussion of
24 the policy issues related to that particular step in the
25 process. So you will see, for instance, following the

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1 local approval and CEQA presentation we'll have a panel
2 discussion that will focus on noticing. Let me note that
3 in each of the panel discussions we have made an effort
4 and are happy to have the participation of
5 representatives of the solid waste industry,
6 representatives of local government, and representatives
7 of our Local Enforcement Agencies, all providing their
8 perspective on those related policy issues.

9 After we do the local approval and CEQA noticing
10 discussion, we'll move into the review of permits. In
11 the context of that, then move into a discussion of our
12 Permit Enforcement Policy often referred to as PEP.

13 Following that, we will move into a discussion
14 of the application requirements and the LEA's process for
15 reviewing applications. Related to that are a number of
16 topics, including completeness and correctness, RFIs,
17 financial assurances, CEQA and conformance.

18 We've chosen today to focus the panel discussion
19 related to application requirements and the LEA process
20 on conformance. This is an issue that has been under
21 discussion for many months and the staff is prepared
22 today to provide you a summary of the workshops that they
23 have conducted. You'll hear more panel discussion on it
24 in anticipation of bringing forward a discussion and
25 consideration item for you within the next month or so.

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1 When we move on to our workshop in August,
2 you'll see that we will pick up the process at the point
3 the California Integrated Waste Management Board receives
4 and begins its review of the permit as prepared and
5 submitted by the Local Enforcement Agency and then
6 reviewing Board action and the ultimate permit issuance
7 by the Local Enforcement Agency.

8 The issue discussions that we will focus on in
9 addition to the items that I just referred to under the
10 permit review process will be the long-term violation
11 policy, the landfill gas and land acquisition practice,
12 financial assurances, completeness and correctness, and
13 one issue that continues to be of concern to all of us
14 involved in this process and that is the time frames for
15 reviewing and acting upon permits.

16 With respect to the format, we'll be using the
17 same format both today and at the second installment, if
18 you will, of this workshop in August. As I said, we will
19 have a presentation from the staff, and here we're going
20 to focus on the statutory and regulatory basis for that
21 portion of the permit process and then discuss with you a
22 bit some policy related to that portion of the process.
23 And then immediately following the staff presentation, we
24 will have the panel discussion providing the perspective
25 again of the LEAs, the industry and local governments.

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1 We'll provide an opportunity for questions and
2 answers between the panelists and the Board Members and
3 staff during that time. It is my hope that at the end of
4 each panel that I will be able to come back up here and
5 engage in a bit of a dialogue with you. We're looking
6 for whatever direction you're prepared to provide us
7 today, and that direction may be anything from we'd like
8 to see this item workshopped again, we would like you to
9 bring an item for discussion, we're ready for an item on
10 consideration, or we don't think this item needs any
11 further discussion. Whatever direction you're
12 comfortable in providing, staff is anxious to receive
13 your comments and your feedback.

14 I might note that we will reserve about -- I'd
15 say 30 to 45 minutes at the end of today's workshop for
16 general testimony. So as we regroup and talk about each
17 of the panel sessions, again I think we all recognize
18 that whatever direction or dialogue we're having is a
19 very initial nature, just getting your thoughts on this,
20 but certainly you will want to listen to the general
21 testimony at the end of the day where members of the
22 audience are invited to provide their thoughts on any of
23 the issues that we've addressed during the day. And
24 certainly because we're not here to take action today,
25 there will be ample future opportunities for the public

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1 to provide input on any of these issues prior to your
2 taking action on any of them.

3 We have a lot of information to present to you
4 today. We hope that you find it interesting and
5 stimulating. In an effort to keep us on schedule and in
6 an effort to make sure that we can move through all of
7 this information without exhausting you, we've asked Jill
8 Jones of our staff to act as our facilitator today to
9 help us with time frames, to keep us focused on the
10 issues at hand and avoid drifting to other unrelated
11 matters. Jill brings a lot of skill to this job and I
12 don't envy her for the task before her because it is
13 going to be a long day and we just ask your indulgence
14 and hope that you find this beneficial.

15 With that, I would like to turn it over to Jill
16 and ask her to run through some of the ground rules we'd
17 like to utilize.

18 MS. JONES: Good morning, Board Members. My
19 name is Jill Jones with the Office of Organizational
20 Effectiveness. I will be facilitating the workshop
21 today. What that means is that I will be helping
22 determine who talks when, also helping keep the
23 discussion focused. As Julie mentioned, our time frames
24 are fairly tight and so that will be the challenge for
25 all of us. And so in order to do that, we've developed

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1 some ground rules for your consideration and those are
2 that we are taking -- the staff is assuming the
3 responsibility through this facilitation role that Linda
4 would normally perform during a board meeting and we are
5 taking that responsibility today so that she can give her
6 full attention to the discussion.

7 Also, we ask that again the time frames are very
8 tight and I will be monitoring those and reminding you
9 all as we go through the discussion of those time frames,
10 and any cooperation that you could give would be much
11 appreciated, and in thinking about that keeping comments
12 very focused will be helpful.

13 Also, we have several panels that will be
14 presenting information today and we're asking that the
15 speakers keep their comments to about five, three to five
16 minutes each, and then again at the end of the day we'll
17 be taking general testimony and are asking members of the
18 audience to keep their testimony to one to three minutes.

19 Also as Julie mentioned, this is not really a
20 time for taking action, making key decisions today but
21 rather to gather information on your part and explore
22 issues and define problems further so that direction can
23 be given to the staff to come back to you so that you can
24 make some subsequent decisions at a future board meeting.

25 Are there any questions about these ground rules

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1 or concerns with those?

2 CHAIR MOULTON-PATTERSON: Any questions?

3 MS. JONES: Or anything to add perhaps?

4 CHAIR MOULTON-PATTERSON: One of the important
5 things I know is are you going to be establishing a time
6 for lunch so we know?

7 (Laughter)

8 CHAIR MOULTON-PATTERSON: I know everyone is
9 anxious to --

10 MS. JONES: Lunch is very important.

11 So we'll real quickly at the agenda next.

12 Throughout the day we'll be taking you back to this
13 agenda, and everything that's circled in red or boxed in
14 red will tell you where we are. That's kind of our
15 tracking mechanism for the day. Lunch -- first of all we
16 need a break this morning, so thinking about that if all
17 goes according to plan, by the time we get through the
18 process step up, doing our general overview, our local
19 approval and CEQA discussion and then through our
20 noticing panel, right immediately preceding the noticing
21 panel we'll take our break. That should be around 11:00.
22 Then we'll come back, do the permit review presentation,
23 and then break for lunch. So that will be the shorter
24 segment.

25 Then the rest of the day we will work in a break

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1 somewhere halfway through the afternoon, but we hope to
2 accomplish everything that's on the agenda in the course
3 of the day today. So we're more than willing to work
4 with you. If you need a break, feel free to come and go
5 as you please or signal us and we can negotiate something
6 that works for everyone.

7 CHAIR MOULTON-PATTERSON: Thank you.

8 MS. JONES: So now Mark will begin with the
9 overview.

10 MR. DE BIE: By way of getting things rolling in
11 terms of the content of this workshop, we wanted to start
12 off with the general overview, and one aspect of that
13 general overview is looking at the participants in the
14 permit process. And those are basically the applicant,

15 the operator of the facility, but then the key players in
16 this process are the LEAs and the Waste Management Board.
17 They are the main participants in the process.

18 Their roles generally are outlined in statute as
19 well as in regulation, and those statutes and regulations
20 that pretty much establish the current permit process
21 were established by AB 939 and 1220 and then the
22 regulations that were based upon those statutory changes.
23 Generally the LEAs carry the process, but the Board does
24 have a role in that they concur and object to the
25 issuance of permits.

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1 To give you a little bit more of a flavor of who
2 the LEAs are and what they do, we've asked Mel Knight
3 from Sacramento County to give you an overview of the
4 LEAs and touch on things such as where they're placed
5 within local government and how they operate, then I
6 believe Mel is going to ask Justin Milan to add more
7 comments.

8 I'll turn it over to Mel at this time.

9 MR. KNIGHT: Thank you, Mark. Again for the
10 record, I'll Mel Knight, Director of Environmental
11 Management for the County of Sacramento. I'm here today
12 as Director of Sacramento County LEA and probably more
13 importantly as the current chair of the Statewide
14 Directors of Environmental Health Solid Waste Policy
15 Committee. And as you're learning in this job for those
16 that are new, there's a lot of acronyms. CCDH is one
17 that you'll be hearing as well as LEA.

18 I think I heard five times a reference to tight
19 schedules, so I'm going to skip pretty much to a tight
20 script here, go through something very quickly and be
21 inviting you to take advantage of our continuing offer
22 for you to get more information from the LEAs directly as
23 it may be actually in the field, in our offices, or again
24 when the rubber hits the road.

25 Again, I appreciate the opportunity to take a

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1 few minutes to reinforce your awareness and appreciation
2 of LEAs, and this indeed is to invite continuing
3 interaction to the future. As you're no doubt aware,
4 LEAs are your designated agents with a front line
5 responsibility for ensuring regulatory compliance at the
6 hundreds of facilities in this state.

7 While we perform literally thousands of
8 inspections each year, staff are not merely inspectors.
9 Staff ensure compliance with the full range of
10 educational, inspection and enforcement activities. As
11 Mark referenced, there's no one model for LEAs. I happen
12 to run an environmental management department that looks
13 like an EPA in Sacramento County. Others are within
14 health agencies. So there's a broad array here on how
15 these services are delivered, but they're all delivered
16 with the goal of regulatory compliance and regulatory
17 compliance through education, inspection and enforcement.
18 That's the theme you'll continue to see and hear.

19 Our staff are highly educated and typically
20 experienced in other program areas. You're hearing a lot
21 now about cross-media inspectors. Local agencies are the
22 original cross-media inspectors. In our department,
23 we're the agent for the water board, agents for the
24 Department of Health Services, Department of Toxics. Our
25 staff frequently will take advantage of economies of

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1 scale by going to facilities that have multiple
2 regulations, and it's again another example of something
3 we're seeing and trying to build on which will be
4 consistency of standardization in data management,
5 enforcement tools, and other techniques as we build on
6 this. I think that's very consistent with both the goals
7 of the Cal/EPA and your Board.

8 We value the continuing support and training
9 provided by your Waste Board staff as well as by your
10 Board, and we appreciate this rigorous scrutiny to
11 certify our proficiency. Your staff puts each of our
12 programs through a process of review that actually is, I
13 feel, a very effective one in ensuring that there is
14 adequacy and consistency within the programs.

15 During the past several years there's been
16 significant process in establishing what we frequently
17 hear of as the state local partnership, and like all
18 relationships this requires continuing attention.
19 Building on this base as I started with, I invite you as
20 Board Members to take the time in your busy schedules to
21 learn more about the abilities and activities of your
22 agents, the LEAs. We work for your Board.

23 In addition to this brief introduction to LEAs
24 you're going to receive on this workshop, please feel
25 free to join us in future meetings and in the field as we

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1 reinforce the mutual interests and understandings.
2 Sacramento County, for instance, is a short mile and a
3 half our offices from this building, and if you are at
4 all interested in seeing how LEA field activities are
5 done in Sacramento County or any other LEAs, we'll be
6 glad to facilitate that because we feel as your agent and
7 as your partner it's a very important relationship.

8 With that, I was going to ask the Executive
9 Director of the California Conference of Directors of
10 Environmental Health, Justin Milan, to take a moment.

11 MR. MILAN: Madam Chair, thank you, Board
12 Members. Appreciate the quick opportunity here.

13 The reason I wanted to piggyback on what Mel was
14 saying is because I wanted to put the LEA process into a
15 broader context. Mel did mention it's one of the
16 environmental health programs in the state. Depending on
17 the local environmental health agency, we may have as
18 many as 20 different programs that we run, everything
19 from the CUPA (phonetic), the infamous CUPA, program
20 which is a hazmat program, we have the local underground
21 storage tank programs, we have drinking water programs,
22 we have food sanitation programs. So there's a broad
23 array.

24 And I think the importance that -- the
25 importance for you to understand that is that essentially

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1 environmental health operates in a public health and
2 environment context. That's what we, as environmental
3 health departments and specialists, are trained to do and
4 that's what we always try and to assert in our management
5 of the LEA program. I have a brochure here of the
6 environmental health programs in the state as background.

7 I want to follow-up and also reinforce a couple
8 of things. The Environmental Health Association lobbies
9 and advocates on behalf of environmental health programs
10 at the local level throughout the state and, of course,
11 you'll see myself or somebody else before your Board,
12 before the legislature, and we work closely with your
13 staff on all sorts of permitting and enforcement issues
14 as well.

15 The important thing that we want to stress is
16 that we are agents of the State, and as we get into this
17 extensive discussion of particular issues that you face
18 today, we want to clarify that we -- at the local level
19 we see this as a partnership, the buzz word that Mel
20 raised. We see this as a partnership where we have to
21 work closely with the State. We work very closely with
22 your board staff, but we are delegated, designated and
23 certified agents of the State. What is happening at the
24 local level is essentially what the State wants to
25 happen.

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1 So we encourage you not to look at it as an us
2 versus them, not to look at this program as a state
3 versus a local program, but as an LEA program. It's a
4 joint program with specific roles and responsibilities.

5 The LEAs are responsible for permitting and enforcement.
6 They are the primary agents to do that. The Board makes
7 sure that we do our job properly. So this is a
8 partnership. It's a statutory partnership and it's a
9 functional working partnership as well. That's the first
10 thing we wanted to stress.

11 The other issue, and we work closely with
12 Cal/EPA in other areas, is the whole issue of compliance
13 versus enforcement versus inspections and everything
14 else. And one of the issues on your agenda, part of the
15 discussion we have with the enforcement regulations going
16 through the process is really to understand what we mean
17 by compliance, what we mean by enforcement, why we are
18 doing the inspections in the first place. And then you
19 have all the little nuances about what action the LEA is
20 taking in order to ensure compliance.

21 In a poll of all the environmental health
22 departments that we did recently, the LEA program ranks
23 right at the top, the top one or two programs of all the
24 environmental health programs, the 20 programs that we do
25 for effectiveness. And that means that we feel -- as

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1 LEAs, we feel that the compliance level in the solid
2 waste program under your tutelage and guidance is if not
3 the best certainly one of the one or two best in the
4 state. We feel that we do accomplish, we achieve very,
5 very high compliance. So at the least that means that
6 the operators are operating pretty close to a hundred
7 percent compliance with state minimum standards. I think
8 we should be applauded for that.

9 So in the context of these issues and problems
10 that you grapple with, let's not forget that we are very
11 successful and we have done very well, largely to your
12 oversight, largely to the very strong working
13 relationship we have with the Board Members.

14 The other thing I wanted to mention again from
15 the feedback from the locals, although we have very, very
16 high effectiveness, the efficiency sometimes dips a bit
17 and that's a thing we struggle with the whole time. Do
18 we get micromanaged, how much more processing do we need
19 to do on certain issues, are we ever going to process
20 something to do, and that is something that we grapple
21 with as well in providing the service. We collectively
22 have to ensure that we're not only effective but we're
23 efficient.

24 All is not rosy. I think there's some issue
25 that's we have to continue to grapple with. You've got

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1 three on the agenda now, another couple coming up in a
2 month's time. We want to throw out a few other things
3 just so that we're not criticized and being too
4 complacent and too happy with the arrangement. We're
5 not. I think there are many areas of improvement.

6 One, for example, is data management. We're
7 working with Cal/EPA. We have to be ensure that we're
8 consistent with the data management. As you redesign
9 SWIS, we've got to be in sync with the other
10 environmental health and the environmental programs. We
11 can't have a program just for the LEAs, another one for
12 the CUPAs, another one for the other environmental health
13 programs. That's going to be big on our agenda.

14 We are looking for more formal support from the
15 Board and the board staff when the LEA takes a decision
16 with which the board staff concurs. This is a
17 partnership and we would like to have the back up of the
18 Board and we may need to clarify the procedure by which
19 we get there.

20 Another issue is, as I mentioned, the
21 enforcement. We need to clarify what the expectations
22 are of the locals when it comes to notice of violations,
23 what you expect from us, and we need to come to a mutual
24 agreement on that. Otherwise it's not going to work.

25 And finally, we would encourage the Board to

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1 entertain the idea of further workshops that don't just
2 deal with specific issues but certainly for the newer
3 Members and certainly for people like myself that can't
4 understand the process fully, maybe we can set aside half
5 a day and just run through the LEA program, not just the
6 LEAs, not the locals, but with your Board staff so that
7 we can see it's a cohesive program.

8 Thank you for the opportunity and I welcome any
9 questions either now or later. Thank you, Madam Chair.

10 CHAIR MOULTON-PATTERSON: Thank you.

11 MR. DE BIE: Today we're talking about the
12 permit process, and to sort of get the overarching, I
13 wanted to point out that this process is well defined in
14 both statute and in regulation. We are working
15 diligently on putting together what used to be called the
16 permit desk manual which describes this process in much
17 detail and we're taking it to a higher level and trying
18 to make it into a tool box so that you can one, utilizing
19 this process we'll both be able to know how the process
20 is to flow but also access the tools that it's needed.

21 But basically this process currently is fully
22 described in statute and regulation and you'll find those
23 in the PRC Code 44001 through 44018. In that you find
24 out what a permit is, what the product of this process
25 is, and basically the product of the process is a permit

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1 that allows an operator, a person, to operate a solid
2 waste facility; solid waste facility being a disposal
3 site transfer/processing facility, a compost facility, as
4 well as a transformation facility, and those are those
5 garbage-to-electricity, waste-to-energy plants. There
6 are currently three in the state.

7 It's issued to the facility operator. It's not
8 issued to a landowner or a facility owner. It's issued
9 to the operator. It authorizes certain design and
10 operational aspects of that facility. And before
11 changes, significant changes, can be made to that

12 facility, the permit needs to be revised. So that in a
13 nut shell is what we're talking about in terms of what
14 this process leads to is this operating permit.

15 Now, it used to be that there was just the one
16 permit, which is commonly referred to as the full permit,
17 but for reasons that I'll leave to the next speaker, Bob
18 Holmes, to explain, there are now more than just the one

19 permit. There's a whole slew of permits that we commonly
20 refer to as tiers. So to further define what this thing
21 is that this product of the process, this permit, I'm
22 going to ask Bob Holmes to step forward and describe for
23 you the permit tiers.

24 MR. HOLMES: Good morning, Madam Chair and
25 Members. I'd like to talk to you about the why, the when

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1 and the what of tiers briefly this morning.

2 Mark mentioned that prior to 1995 we had one
3 permit and that seemed to work okay for the two types,
4 basically the two types of facilities we had at the time,
5 a landfill and a transfer station. But with the passage
6 of 939 and diversion mandates and the programs that local
7 jurisdictions implemented to divert waste, we had new
8 types of handling facilities and operations spring up
9 such as material recovery facilities and composting
10 facilities and also unconventional waste types that we
11 hadn't dealt with separately before such as contaminated
12 soil or ash. So if this stuff wasn't being buried, it
13 was going somewhere and it was going to these new types
14 of operations and facilities.

15 So what we found was that that one permit, that
16 one size permit didn't fit all these new operations. We
17 stretched it and we altered it but it still didn't fit.
18 It was thought to be burdensome. The process itself took
19 a lot of time to go through, time, took a lot of money as
20 well. It was costly to both the applicant and the
21 regulator who was processing the permit. It Took a lot
22 of time from them as well.

23 The permit requirements vary from jurisdiction
24 to jurisdiction. For the same type of operation there
25 would be differences from one county to the next and

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1 perhaps rightly so. Those that ended up with more
2 restrictive permits found the process to be an
3 over-regulation. So to better address the need to build
4 this infrastructure of the new facilities that is now
5 handling the diverted waste, the Board sought to revise
6 the permitting structure through regulation. This whole
7 tiered structure is in the Board's regulations in Title
8 14.

9 So the first thing we did was the structure
10 itself, the framework, what you see on your screen now.
11 We had initially just the full permit, the top one, and
12 we added five additional tiers. Working downwards you go
13 from more restrictive to less restrictive. So we did
14 that through regulation in March of '95.

15 Now, those -- at that point the regulations were
16 not applicable or operative to any particular type of
17 operation. We had -- to become operative, the Board must
18 adopt specific regulations for either the handling type,
19 such as with composting or transfer processing, or the
20 particular material type, such as with contaminated soil
21 or nonhazardous ash. So you see approximately once per
22 year from '95 we've adopted other regulatory packages
23 that have placed these within the tiers.

24 In tab two of your packages, you'll see a
25 multicolored matrix entitled "tiered regulatory

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1 placement." This is a summary of those tiers you see on
2 your screen now, how they fit within the tiers. Mostly
3 the criteria used to place within the tiers is based on
4 the volume of the material. There's a general
5 methodology that's a process that's gone through, but it
6 has to do with the risk posed by the facility and usually
7 that's associated with the volume of material and the
8 type of material. That's just for your information.

9 We have -- we are down to our last two on the
10 to-do list in terms of the types of operations that need
11 to be slotted into the tiers. That's construction and
12 demolition material and a broad category of semisolids,
13 muds and sludges that we are reassessing right now to
14 determine if regulations are actually necessary for that.
15 So we're at the bottom of the list.

16 We are also coming back around to do some
17 rethinking on our composting regulations. We have
18 workshops going on as we speak today in San Jose to
19 collect feedback on those organics regulations. So
20 that's the when, and now for the what.

21 The first four tiers starting from the top are
22 subject to state minimum standards. State minimum
23 standards, of course, are regulatory provisions that
24 speak to the operations of the facility such as for
25 landfill, we're talking about placing six inches of cover

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1 daily or controlling gas migration. For transfer
2 stations, we're talking about cleaning and dust control,
3 noise control. For composting operations, it's metal
4 testing and pathogen reductions. These are operational
5 standards that each of the -- any facility or operation
6 within those first four tiers are subject to state
7 minimum standards.

8 The excluded tier is not subject to state
9 minimum standards. So the significance here for the
10 excluded tier is that we recognize operations in this
11 tier to be within our regulatory purview if the Board so
12 chose to regulate them, but the risk posed by them is so
13 small that we're saying we don't -- we're not going to
14 exercise that right at this time. An example of an
15 excluded operation is a backyard composter, someone who
16 has a small pile just in their back yard.

17 Now, with respect to the permitting of these
18 tiers, the first three tiers -- full, standardized, and
19 registration -- are considered facilities, solid waste
20 facilities. The significance here is that there's a
21 statutory requirement for all solid waste facilities to
22 obtain a Solid Waste Facilities Permit. So the first
23 three tiers are considered permits.

24 There is also a statutory requirement for a
25 monthly LEA inspection for all facilities and an 18-month

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1 inspection for landfills and transformation facilities
2 for board staff.

3 Then finally the last two tiers are not
4 considered facilities. They are considered operations.
5 Therefore, it's not a permit. There is not a statutory
6 mandate for an inspection frequency. We have the -- the
7 inspection frequency is either set in regulation as we
8 adopt those, as we place those into the tiers, or is left
9 to the discretion of the LEA, so as needed essentially.

10 You also have in your booklets, in your
11 pamphlets under tab two, another matrix that is labeled
12 in the first column, LEA Permit task, which outlines some
13 of the key points, key differences between the tiers and
14 I won't go over those at this time unless you have any
15 questions. You will notice, of course, that the ones
16 you're probably most familiar with are the full and
17 standardized, which are the ones that come to you because
18 it requires your concurrence. There will be more
19 discussion of that throughout the day and at the next
20 workshop in August.

21 So I'm happy to entertain any questions at this
22 time. If not, I'll turn it back over to Mark.

23 MS. JONES: Questions from the Board Members?

24 CHAIR MOULTON-PATTERSON: I see none.

25 MS. JONES: We'd like to encourage you that if

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1 you need to interject any time a presentation is being
2 made. Feel free to do that. We've tried to keep the
3 pace kind of informal and the environment informal today.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 MR. DE BIE: Please ask away. This is a lot of
6 information. We don't want to just do an information
7 dump but make this as interactive as possible. So that
8 was our attempt at defining what a permit is, talking
9 about that it's a permit to operate, it goes to the
10 operator, and then these various tiers.

11 Separate but very much linked to the Solid Waste
12 Facility Permit process that leads to the issuance of a
13 permit is typically some sort of local approval process.
14 These local approvals usually include the city, county
15 and could include a JPA, and it's typically something
16 like a conditional land use permit or a zoning change or
17 something that is somehow linked to the solid waste
18 facility.

19 So we have this local process occurring, and one
20 of the linkages between this local process and the Solid
21 Waste Facility Permit is that the public's awareness of
22 the facility and/or the changes at an existing facility
23 key in. This is when the public has their opportunity to
24 become fully aware of what's going on with these solid
25 waste facilities.

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1 That's done either through public hearings or
2 through the CEQA documentation that is usually prepared
3 to support those local approvals. The CEQA document is
4 put out for review and comment and in that way it's
5 noticed to the public. So the linkage between the local
6 approval and the Solid Waste Facility Permit is that it's
7 the one of the ways that the public can get involved with
8 the process, and then also the CEQA documentation that
9 will eventually be used to support the Solid Waste
10 Facility Permit approval is developed because of that
11 local approval.

12 Now, in every process there's some variation,
13 and when things get -- when there's variety brought into
14 the process, that's when some issues and concerns can be
15 developed.

16 First of all, the Solid Waste Facility Permit
17 process is not dependent on the local approval process.
18 That is a separate process that can occur on its own. It
19 does not necessarily directly link and progress into the
20 Solid Waste Facility Permit process. So in that regard,
21 sometimes this local approval process may happen before
22 the Solid Waste Facility Permit process, during the
23 process, or sometimes even after a Solid Waste Facility
24 Permit has been issued. Depending on which scenario is
25 followed, it will have an affect on the Solid Waste

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1 Facility Permit process, but in most cases the --

2 CHAIR MOULTON-PATTERSON: Excuse me.

3 MR. DE BIE: Yes.

4 CHAIR MOULTON-PATTERSON: May I interrupt?

5 MR. DE BIE: Sure. Please.

6 CHAIR MOULTON-PATTERSON: Could you give an
7 example of that so I understand?

8 MR. DE BIE: Of the three basic scenarios?

9 CHAIR MOULTON-PATTERSON: When you wouldn't have
10 local approval on this.

11 MR. DE BIE: Okay. Well, I guess I'll bring up
12 the one that we've been discussing in our CEQA workshops,
13 and that has to do with one of the tiered permits which
14 is the registration permit. This is a permit that the
15 LEA has full authority to process and issue. It does not
16 require Board concurrence. When that registration permit
17 tier was developed, there was an indication that the
18 issuance of that permit should be considered ministerial
19 approval by the LEA. That CEQA compliance by the LEA
20 might not be required for the issuance of that permit.

21 So we have observed situations where an
22 applicant has leap-frogged over the local process, the
23 land use or zoning process, gone to the LEA, requested
24 their registration permit, there's nothing in that permit
25 process that forces the LEA to stop and rethink and wait

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1 for the local approval process before continuing on and
2 issuing that permit. So we've had a couple situations
3 where the LEA has issued the registration permit and then
4 the applicant has gone to the local planning entity and
5 said you know, I want my Conditional Use Permit.

6 And one of the problems that creates is the
7 applicants holding up the state permit and saying why do
8 you have an issue with this, why do you have a problem
9 with it, here's my permit, give me my Conditional Use
10 Permit. If the planning people are fully cognizant of
11 what that permit is, it's just a permit to operate, it's
12 not a permit to build the facility, to establish or site
13 the facility, it's just a permit to operate, and
14 basically what the applicant has done is got a permit to
15 operate before he built the thing or got permission to
16 build it. That's one situation where it may occur.

17 CHAIR MOULTON-PATTERSON: Thank you.

18 Mr. Jones.

19 BOARD MEMBER JONES: On the registration tier on
20 the example that you're using, would that be like a small
21 volume transfer station?

22 MR. DE BIE: Yeah, it could be. A small volume
23 transfer station qualifies for registration. Some
24 compost facilities do.

25 BOARD MEMBER JONES: And for them to go get the

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1 registration tier prior, was it because it was already
2 zoned appropriately?

3 MR. DE BIE: The registration tiered permit
4 process does not require the LEA to determine whether or
5 not the facility is in compliance with local land use.
6 It's not on the checklist. It's not something they have
7 to verify, so --

8 BOARD MEMBER JONES: On a transfer station
9 that's in registration, what are the tonnage parameters?

10 MR. DE BIE: 60 cubic yards or 15 tons per day.
11 Between 15 tons per day and 100 tons per day.

12 BOARD MEMBER JONES: Between 15 and 100 tons?

13 MR. DE BIE: 150 tons. I'm sorry. 60 cubic
14 yards or between 15 tons per day and 150 tons per day.

15 BOARD MEMBER JONES: But not to exceed 60 cubic
16 yards?

17 MR. DE BIE: Right.

18 BOARD MEMBER JONES: So 60 cubic yards of
19 garbage loose weighs 217 pounds a yard. Compacted weighs
20 about 700 a yard. So really when you get to 150 you're
21 looking at concrete which would really only weigh 60 tons
22 or something like that. So the 150 was a parameter to
23 deal with that heavy, heavy, heavy material?

24 MR. DE BIE: Yeah. My recollection is it was an
25 attempt to address both the volume and the tonnage

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1 aspects and the problems that are created because of
2 those. So it was layered in there with the volume
3 maximum and a tonnage maximum.

4 BOARD MEMBER JONES: Prior to going to the
5 tiers, the 60 cubic yard used to be the cutoff for what
6 was called modified or -- what the heck was it called?
7 It was a -- was it a modified permit? We had full
8 permits and we had -- what was the other permit before
9 the tiers came in? Small volume.

10 MR. DE BIE: Both small volume and large volume
11 required the same permit, the full permit. It was just
12 the requirements to apply for those permits were slightly
13 different, but the large volume required a Report of
14 Facility Information, and I think the small volume just
15 asked for a plan, but it was still the same permit and
16 the permit process, the 60-day clock for the Board and
17 all of that.

18 MS. TOBIAS: Madam Chair, I think an easier
19 example, I think Mark kind of started with the more
20 complex one and I think Board Member Jones alluded to it.

21 What happens at the local level is that if you
22 have the proper zoning and the proper general plan
23 designation, then you would not necessarily need local
24 permits that were triggered when you came forward to go
25 through the process. So that would put the LEA into that

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1 position of looking at the CEQA first rather than at the
2 local entity. So that's what triggers or that's what
3 gets you to that point without having gone through the
4 CEQA process at a city or county level.

5 BOARD MEMBER JONES: I think that's important

6 because I think when we talk about it going around the
7 city process, we're talking about something that usually
8 is put into place at the request of a jurisdiction to
9 deal with an issue. And up to 60 cubic yards is one big
10 debris box.

11 MS. TOBIAS: Also, I think that kind of zoning
12 general plan is a way for the locals to say where they
13 want that type of industry to locate. So to a certain
14 extent it's an expediting function at the local level to
15 say if you go in these areas, we don't -- all our
16 concerns have been resolved at the zoning and general
17 plan level. So there's been environmental documents done
18 at a larger or more gross level. And unless the facility
19 is going to have some kind of impact that has not already
20 been studied, then the impacts are already dealt with at
21 that higher level.

22 CHAIR MOULTON-PATTERSON: Thank you.

23 MR. DE BIE: I should have been more clear. I
24 guess when I say local approval process, I'm including
25 zoning that was done maybe years in advance. But what I

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1 was trying to respond to your question is when a local
2 approval is required but it comes after the Solid Waste
3 Facility Permit process, and that's why I chose that
4 particular example. But certainly in many cases there is
5 no new local approval process because it was dealt
6 through a zoning change or whatever years prior, so
7 there's no need to address that again.

8 CHAIR MOULTON-PATTERSON: Thank you very much.

9 MR. DE BIE: One of the issues associated with
10 the local approval process that the Board Members had
11 asked about was noticing. So what we wanted to do was to
12 get a panel of practitioners, people that are involved in
13 the local approval process, planners as well as the LEA,
14 to do a couple of things.

15 One is to describe a typical process for you and
16 highlight what triggers that approval process as well as
17 any exceptions to that process, and then as they go
18 through that process to the highlight issuing or noticing
19 aspects of that process and to speak to things such as
20 how the community is involved with the local approval
21 process, how they become aware of it. Also we've asked
22 them to look at what the State's role is or should be in
23 that process as well as how the process could be modified
24 or changed if it's thought that noticing requirements
25 don't meet the standard.

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1 So in that regard we outreached to League of
2 Cities and Yvonne Hunter and asked her to bring a panel
3 together and she's done that. So I want to pass it on to
4 Yvonne to both lead in and introduce the panel members.
5 We'll have them sit up front here and do their
6 presentation and then be available for question and
7 answer from the Board about the process as well as the
8 noticing aspects.

9 CHAIR MOULTON-PATTERSON: Thank you.

10 MS. HUNTER: Good morning. I'm Yvonne Hunter
11 with the League of California Cities and delighted to be
12 here. We want to thank you for the opportunity to
13 participate in this panel. This is something we've been
14 chatting with various Board Members about for perhaps the
15 last year.

16 Mark I think set the stage properly and
17 certainly with the questions that some of you asked.
18 There is a whole process that goes on, you might say, in
19 parallel to the Solid Waste Facility Permit. The Solid
20 Waste Facility Permit provisions you find in the Public
21 Resources Code. The other provisions that our speakers
22 are going to talk about primarily are in the Government
23 Code and that is the local planning process, the local
24 land use process, and CEQA.

25 I think I need to disagree just a little bit

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1 with what Mark said. Every single project, regardless of
2 what tier it's in, requires some sort of local permit.
3 They cannot operate without it. Now, it may be
4 ministerial, it may be a Conditional Use Permit where the
5 public agency through public hearing, public notice. I'm
6 just looking at Chairman Patterson and Board Member
7 Medina. You know about all of these from your service in
8 local government. There are public hearings. There are
9 public notices.

10 The local government may require conditions that
11 the applicant has to meet and it doesn't matter if it's a
12 solid waste facility, if it's a drive-thru fast food
13 restaurant, if it's a lumber yard. These are all subject
14 to Conditional Use Permits. In addition, many of these
15 are subject to CEQA.

16 What I would like to comment is that -- let me
17 do this first. We provided Mark with a number of copies
18 of some excerpts from our update on the Planning
19 Commissioner's Handbook, and I think he passed that out
20 to you. I've duplicated the sections on zoning, CUPs,
21 Conditional Use Permits, and CEQA. In addition, I
22 brought with me a copy of the 2000 edition of the
23 handbook. It's written for Planning Commissioners. I'll
24 leave this with Mark. If any of you want your own
25 individual copy for a resource, please let me know and

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1 I'll be happy to get it to you. This is written sort of
2 in lay terms for the non-technical planner, for Planning
3 Commissioners, so anything you want to know about local
4 planning.

5 What we did is we've asked two city people who
6 are involved in the solid waste process and in the
7 planning process to share with you the perspective, sort
8 of local government's view of local planning as opposed
9 to the Board's view of local planning. We have two
10 speakers, Darryl Boyd, who is a Senior Planner from the
11 City of San Jose, and Dennis Ferrier, who is the Local
12 Enforcement Agency person in the City of San Jose, to
13 give an overview of their perspective roles. Darryl is
14 going to make it basically generic because these basic
15 planning principles apply to all cities and counties.

16 CHAIR MOULTON-PATTERSON: Yvonne.

17 MS. HUNTER: Yes.

18 CHAIR MOULTON-PATTERSON: Excuse me. You said
19 we could be informal. This is such an important workshop
20 for us. I just want to be clear and that's why I asked
21 because coming from local government I thought the
22 permits had gone through a local approval process. So I
23 just want to be kind of clear on that.

24 MR. DE BIE: I think Yvonne and I agree. I was
25 again addressing the timing issue. Eventually there will

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1 be a local approval. But in the case of the registration
2 example, sometimes the permit process flows and ends
3 prior to that local approval process starting up because
4 again the applicant's leap-frogged the process. Yes,
5 eventually there will be a local process. It's the
6 timing. Whether it happens entirely before, like with a
7 zoning change, maybe a year or two before, if it happens
8 at the same time where they're going through and getting
9 their Conditional Use Permit as they're also proceeding
10 through the Solid Waste Facility Permit process, or in
11 some cases it may happen after.

12 So I agree with Yvonne that yes, almost every
13 single project dealing with solid waste will have some
14 sort of local use.

15 MS. HUNTER: They will need a local permit of
16 some sort. They cannot operate without it.

17 MR. DE BIE: The subtlety also comes in with you
18 have a permit that has certain limits on it and the use
19 permits or the zoning may not have any limits on it. So
20 there is sometimes a need to do additional CEQA or
21 expanded CEQA to address situations within the Solid
22 Waste Facility Permit process.

23 So we wouldn't be able to depend on the local
24 approval process to supply that CEQA document. It would
25 have to occur during the Solid Waste Facility Permit

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1 process. An example of that is again, Marin County. A
2 large landfill had a Conditional Use Permit that
3 basically said you're a landfill and that's what you can
4 do and didn't have any limits on what that landfill could
5 be. The landfill came in for very large changes in
6 design and operation in terms of expanding the footprint
7 and going up in elevation and lots of things that could
8 potentially create a significant impact to the
9 environment and the LEA ended up being the lead agency
10 for an EIR to support that permit. So the local approval
11 process was not available to them to supply that
12 document.

13 CHAIR MOULTON-PATTERSON: Okay. I just wanted
14 to be clear because it seems like my experience, you
15 know, there had been a lot of public hearings and local
16 input and I just wanted to be clear on that. So thank
17 you, both.

18 Senator Roberti.

19 BOARD MEMBER ROBERTI: In the example you just
20 gave, Mark, on Marin County, when the initial permit --
21 I guess it was expansion was requested, who was the
22 authority that heard the first request for a change?

23 MR. DE BIE: You know, this was a
24 well-established landfill, had been there forever, and
25 the land use permit was there. It was a good 20 years

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1 old I believe my recollection was, so when the operator
2 requested these expansions in height and lateral
3 expansions, that sort of thing, again, the Planning
4 Commission, the Board of Supervisors did not see a need
5 to address the Conditional Use Permit at that time and so
6 the LEA picked up and moved forward.

7 BOARD MEMBER ROBERTI: It was the
8 LEA.

9 MR. DE BIE: The LEA was the health department.
10 It was a branch of the county government but acting with
11 their separate hat, as Mel and Justin indicated, as the
12 LEA and not as a county health group.

13 BOARD MEMBER ROBERTI: And what was the
14 process -- I should know this but I don't. What was the
15 process whereby that LEA was selected?

16 MR. DE BIE: Back in the early '90s, all of the
17 LEAs went through a certification process and were
18 certified by the Board and Marin County was one of them,
19 a lengthy process, and we failed to point out to you --

20 BOARD MEMBER ROBERTI: And we designated Marin
21 County or did we designate their health department?

22 MR. DE BIE: It goes down to the specific
23 department or division.

24 BOARD MEMBER ROBERTI: So we designated the
25 health department.

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1 MR. DE BIE: We didn't designate, we certified.

2 The County designated their health department --

3 BOARD MEMBER ROBERTI: We designated the health
4 department, or we certified.

5 MR. DE BIE: And then we verify that they could
6 meet the requirements and then certify them.

7 BOARD MEMBER ROBERTI: So in all these cases
8 where you have an authority, to wit the LEA, making an
9 initial decision before the local permitting authority,
10 the local government sees it. It isn't an agency that
11 was designated by the local authority and approved by us
12 for that specific purpose.

13 MR. DE BIE: In those rare instances where that
14 occurs, yes, that's what's happening. Yes.

15 BOARD MEMBER ROBERTI: But it is a rare instance.

16 MR. DE BIE: Yes.

17 BOARD MEMBER ROBERTI: Usually the local
18 government is on the scene or --

19 MS. HUNTER: Involved in the process.

20 BOARD MEMBER ROBERTI: Involved in the process.

21 MR. DE BIE: Yes. Yes.

22 BOARD MEMBER ROBERTI: Thank you.

23 MR. DE BIE: It's only because I've been around
24 too long that I can remember these rare instances.

25 BOARD MEMBER JONES: Madam Chair.

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1 MS. HUNTER: What I --

2 CHAIR MOULTON-PATTERSON: Mr. Jones.

3 MS. HUNTER: Go ahead. I'm sorry.

4 BOARD MEMBER JONES: I think though that if the
5 Planning Department and the Board of Supervisors felt
6 that that existing documentation was sufficient and the
7 LEA wanted to take a lead, that's what we certify LEAs
8 for, but they're still a part of the county government,
9 they're still a part of the local process, and whatever
10 documentation they generate is going to end up going
11 before the Planning Department and the Board of
12 Supervisors, so -- right?

13 MR. DE BIE: In many cases the local process for
14 the LEA does require them to go up through the Board of
15 Supervisors. Here's one of those situations where it
16 didn't. In Marin, the Board of Supervisors, Planning
17 Commission said no, we have no involvement here. The LEA
18 acts on their own as an arm of the State and did not
19 require them to come up through the Planning Commission.
20 I believe they did set up some of their hearings to
21 coincide with Planning Commission, but it wasn't as a
22 Planning Commission action item or decision item.

23 So that's a rare instance. Most of the LEAs are
24 set up that if they're taking their own independent
25 action independent from Planning or a Planning

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1 Department, they will bring it up through the Planning
2 Commission, the Board of Supervisors, and there will be
3 public hearings because of that.

4 BOARD MEMBER JONES: Okay. I want Yvonne to go
5 on, but I just want us to be careful about what we're
6 doing. There's some issues in Marin County about -- some
7 internal issues that Marin County is dealing with from an
8 administrative standpoint and I understand that the LEA
9 in question is one of the people that's involved in that
10 thing from -- as a -- as a party to a whatever,
11 termination or something like that. I don't think we
12 should be using Marin County as an example.

13 MR. DE BIE: I've got a couple other ones, too.

14 BOARD MEMBER JONES: I don't think we should be
15 using somebody as an example when we're only getting a
16 staff view when they're not in the room, when either the
17 operator or the LEA aren't in the room because we don't
18 know -- I don't know all the internal workings of what
19 went on in Marin County, but I know there is an action
20 going on that is a personnel action that I just don't
21 feel comfortable using that as an example when there's
22 pending personnel issues.

23 MR. DE BIE: The situation with the permit was
24 good five, six years ago. It's not anything recent.
25 L.A. County is a similar situation where the LEA was

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1 taking their own action on a permit, did their own CEQA
2 document. I believe they did bring it up through their
3 local process, however.

4 So there are instances where the LEA is doing
5 their own decision making locally, sometimes utilizing
6 the local infrastructure, Planning Commission, Board of
7 Supervisors to facilitate that, sometimes not.

8 CHAIR MOULTON-PATTERSON: Thank you. So
9 generally it has gone through --

10 MS. HUNTER: And Chairman Moulton-Patterson, I
11 think that's the key word, generally. What we've asked
12 Darryl to do is to give an overview, a basic overview
13 that probably covers -- I don't know -- 90 to 95 percent
14 of the circumstances. There may be a few out there on
15 the bell-shaped curve that don't follow those processes,
16 but I think they need to be dealt with separately.

17 So we've asked Darryl to give a very brief
18 general overview of Conditional Use Permit planning
19 process and CEQA and then Dennis as the LEA to describe
20 how his activities, where and how his activities
21 intersect or do not with the planning process. Finally,
22 I've asked them to highlight the public notice, public
23 hearing process in that.

24 BOARD MEMBER ROBERTI: Madam Chair.

25 CHAIR MOULTON-PATTERSON: Senator Roberti.

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1 BOARD MEMBER ROBERTI: In the process could
2 somebody address also, if it is an issue, are there any
3 times where there would be a sort of loophole where by
4 going first to the LEA, the person seeking a Conditional
5 Use Permit or any kind of permit change or registration
6 or whatever would be able to evade notification
7 requirements.

8 MS. HUNTER: Okay.

9 BOARD MEMBER ROBERTI: Or has notification so
10 late in the process that it would be almost meaningless,
11 if that is a problem.

12 MS. HUNTER: And I don't -- I think that's a
13 good question. It's a fair question.

14 One of the things we had talked about, and I
15 think your staff may have done this but I'm not sure, is
16 look at several parallel processes. The Board's review,
17 the LEA review, the CEQA review at the local level and
18 the local land use review and look at the intersections
19 for public notice and I'm not sure whether that was done
20 or not, but that's something we've talked about.

21 So I'm going to turn it over to Darryl. I
22 think -- is that a microphone? Okay. And I'll sit over
23 at the table.

24 MS. JONES: Yvonne, before you get started, I
25 just wanted one observation. As Mr. Jones just said,

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1 using that example might skew our view of what's
2 happening with the topic we're discussing today. My
3 question for the Board Members is can you give some
4 direction to staff? Do you want to stay away from
5 examples? Are they examples supporting or hurting the
6 discussion today? Building on the point you were making.

7 MS. HUNTER: For this panel we've asked them to
8 give basic Planning and CEQA 101 -- not even 101A.
9 That's upper division. 1A.

10 MS. JONES: Right.

11 CHAIR MOULTON-PATTERSON: From my own personal
12 view, if this covers like 95 percent -- I understand
13 there are some examples that might not fit, but if this
14 is like 90 to 95 percent of the cities and counties out
15 there, I understand that.

16 MS. JONES: So I'm just thinking for the entire
17 day would you rather that we speak in generalities or do
18 you want specific examples?

19 BOARD MEMBER ROBERTI: Unless you have a pending
20 lawsuit. I think that was the kind of thing Mr. Jones --

21 BOARD MEMBER JONES: Which is the case on this
22 one.

23 BOARD MEMBER ROBERTI: -- was concerned about.
24 Unless you have a pending lawsuit, which we understand.
25 Examples for a layman like me are very, very important.

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1 MS. JONES: That's great. That's good to know.

2 CHAIR MOULTON-PATTERSON: Thank you. And
3 Mr. Boyd, I apologize.

4 MR. BOYD: I guess I would first ask can
5 everyone hear me? Good. Thank you. Again, I want to
6 thank you for the invitation and the opportunity to be
7 here this morning on behalf of local government, and I
8 will try to speak generally and avoid using San Jose as
9 an example, if at all possible.

10 Again, I want to primarily focus on the noticing
11 and public participation component. I really want to
12 focus on probably in my mind five different general topic
13 areas. I'd like to expand my discussion just a little
14 bit beyond just the permitting process. We talked a
15 little bit about general plans and general plan
16 amendment. I would like to touch on that, touch on the
17 permitting process, touch on CEQA, talk a little bit
18 about the public hearing process and then describe for
19 you some different noticing methods that different
20 jurisdictions may use.

21 When we talk about planning, there's really two
22 different levels of planning. There's a long-range
23 planning.

24 CHAIR MOULTON-PATTERSON: Excuse me. I think we
25 we're hearing you fine and did the mike -- thank you.

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1 Sorry.

2 MR. BOYD: That's fine. It was a long drive
3 from San Jose.

4 Again, when we talk about planning, there's
5 really two major components to planning. There's a
6 long-range planning component and that's where the
7 general plan would come into play, and then there's the
8 current planning or implementation component which is
9 where we talk about Conditional Use Permits.

10 As I think staff indicated previously, in some
11 cases a candidate solid waste facility could be
12 identified 20 years or more in advance when a general
13 plan is either being prepared or there are amendments
14 proposed for a certain piece of property to allow that
15 kind of a use. In the adoption of the general plan or
16 general plan amendment there would be a noticing
17 requirement, and usually those decisions would be made by
18 the Planning Commission at a public hearing with the
19 benefit of a public hearing previously held by the local
20 Planning Commission. So there's a noticing component to
21 the general plan.

22 On the implementation side, the zoning code, I
23 would assume in most jurisdictions, would require a solid
24 waste facility to be a Conditional Use Permit, and
25 Conditional Use Permits are discretionary permit with the

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1 intent being that the local jurisdiction has the
2 discretion on where they think such a facility is
3 appropriate or not. Typically Conditional Use Permits
4 would be noticed for public hearing by the local --

5 BOARD MEMBER ROBERTI: Madam Chair.

6 CHAIR MOULTON-PATTERSON: Senator Roberti.

7 BOARD MEMBER ROBERTI: Since you've raised the
8 issue of general plan and there's noticing of the general
9 plan, a couple of questions. Number one, that's
10 really -- you're only speaking of that as sort of a basic
11 notice but nothing that we're all going to rely upon in
12 any circumstance as the sole notice for a --

13 MR. BOYD: No, Madam Chair. No, not at all.

14 BOARD MEMBER ROBERTI: And then the second thing
15 is if there's an amendment to the general plan, do all
16 jurisdictions normally have to notice that?

17 MR. BOYD: Yes, I would think so.

18 BOARD MEMBER ROBERTI: Not as we have in some
19 cases where well, this is an amendment that's consistent
20 with what the permit wanted, not necessarily in the
21 general plan, but we often have that noticing is
22 required --

23 MR. BOYD: Right.

24 MS. HUNTER: And Senator Roberti, generally
25 adoption, revision or amendment to a general plan is a

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1 pretty big deal in a local government. And depending on
2 what is being done, there may be extensive public
3 workshops, discussion, and it's finally approved at the
4 City Council level or Board of Supervisors level.

5 BOARD MEMBER ROBERTI: There are no
6 circumstances that you could think of right now where an
7 amendment to the general plan would escape?

8 MS. HUNTER: I never want to say never because
9 I'm sure there's something out there, but --

10 BOARD MEMBER ROBERTI: Short of your being
11 cautious as you should be.

12 MS. TOBIAS: I might add I would say never
13 because --

14 MS. HUNTER: I'm deferring to my attorney.
15 (Laughter)

16 MS. TOBIAS: The Government Code requires --
17 sets out the noticing requirements for general plan and
18 zoning, and with the general plan it requires that
19 higher -- I guess higher is maybe not the best word, but
20 a more gross level of noticing where it requires notice
21 in the newspaper. Projects that are going to be --
22 specific projects that are going to be taken up are often
23 noticed with a notice on the piece of property, and then
24 if specific pieces of property are going to be treated in
25 that general plan then that requires specific notice, the

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1 same way that you would get at the zoning level, which is
2 that radius map that we've talked about before where it's
3 300 feet for different kinds of uses.

4 So there are different levels of noticing at the
5 general plan level and the zoning level, but there is
6 always noticing required. That would be basically a
7 procedural defect and if challenged would result in
8 probably overturning that and going back over and redoing
9 it. I would say even in an unsophisticated jurisdiction
10 these days that there's -- I'm not aware that there are
11 really noticing problems at this point. I think there's
12 often questions about individual notice, whether property
13 owners have gotten the notice that they think they should
14 have had, but generally I think most jurisdictions are
15 very clear on what the noticing is.

16 MR. BOYD: It would be a real risk to not do
17 that.

18 MS. HUNTER: We take that process pretty
19 serious.

20 BOARD MEMBER ROBERTI: I'm sure. Yes.

21 MR. BOYD: The other point that I would make,
22 Madam Chair, is that it's true that some jurisdictions
23 would consider the general plan amendment and the
24 Conditional Use Permit simultaneously. Other
25 jurisdictions may consider them at separate points in

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1 time. And I think the real point is especially in those
2 cases where the decision on the general plan land use
3 designation and whether to approve a Conditional Use
4 Permit or not can be separated by some period of time,
5 and so there can be a long-term process where the public
6 is involved in the decisions as to whether or not there
7 should be a solid waste facility at any particular
8 location.

9 Again, Conditional Use Permits would also
10 typically be noticed for Planning Commission, and most
11 jurisdictions' Conditional Use Permits are probably
12 approved by the City Council. That's not true in San
13 Jose, but there are lots of smaller jurisdictions where
14 that that is true.

15 I think it's important, and this may help to
16 speak to an earlier question, a real key, fundamental
17 difference between what the local jurisdiction is doing
18 versus say the LEA, I guess, is that the LEA is focusing
19 on operational issues whereas for the local jurisdiction
20 it really is a land use issue, is this the appropriate
21 use at this location. And then as a part of the
22 Conditional Use Permit you may or may not get into
23 operational aspects.

24 Again, the next area I wanted to talk a little
25 bit about was in regards to CEQA. Again, I would expect

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1 that most facilities like we're talking about this
2 morning would either require a Negative Declaration or a
3 mitigated Negative Declaration or a full-blown
4 Environmental Impact Report with the local jurisdiction
5 as the lead agency, but again there would be a number of
6 responsible agencies involved in the permitting and
7 approval of such a process and the state CEQA guidelines
8 and legislation require that the Negative Declarations
9 and the Environmental Impact Reports would be then
10 circulated through the State Clearing House to the
11 affected responsible agencies so that they do have an
12 opportunity to review and comment on those documents.

13 Again, there would also be notice provided to
14 local residents in that regard. In some cases the
15 noticing for the Environmental and the Conditional Use
16 Permit may be handled jointly or it could be separate as
17 well, just depending upon the local process and the
18 timing.

19 Again, I think that in most cases it's important
20 to point out that there would usually be at least two
21 public hearings, one before the Planning Commission, one
22 before the City Council. Again, those hearings could be
23 noticed separately or separately.

24 BOARD MEMBER ROBERTI: Madam Chair.

25 CHAIR MOULTON-PATTERSON: Senator Roberti.

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1 BOARD MEMBER ROBERTI: This brings to my mind on
2 noticing -- it's a very important process to this
3 Board -- a situation we had maybe a year ago now where
4 there was a request to expand a transfer station's
5 operations in Downey. The transfer station, which is
6 actually defined transfer station even though I've
7 complained about it and they think I don't like it, but
8 it's a very fine transfer station. But there were
9 problems in the noticing because it was on the border of
10 the city of Norwalk, and the uglier part of the transfer
11 station, not the part where I was led through which was
12 of the City of Downey, the uglier part overlooked a
13 housing -- residential, residences in the City of
14 Norwalk. The people in the City of Norwalk say they were
15 never noticed, even though that was the closest number of
16 houses as opposed to more industrial area in Downey which
17 had been noticed.

18 My question is what do we do for safeguards
19 where you have jurisdictional borders, which happens in
20 California with our crazy quilt local jurisdictional maps
21 everywhere, where we can feel assured that people who
22 live in the adjacent jurisdiction and are not inclined to
23 go to the Downey city hall because they don't know it
24 because they live in the City of Norwalk, are properly
25 noticed? This is a concern I have as far as this Board's

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1 actions are concerned, even on something which is a
2 perfectly fine facility, but at least someone should get
3 his objections in because they don't like looking at it
4 or being next to it.

5 MR. BOYD: I would like to think, Madam Chair,
6 that that's truly an exception because I think that most
7 jurisdictions -- I know this is true in San Jose.
8 There's nothing in our Code that says if you live in
9 Cupertino we're not going to give you a notice. In fact,
10 we would try even harder to make sure that those people
11 who are not San Jose residents do get a notice because
12 they can often times be the most vocal and the most
13 concerned.

14 So even then if the residents weren't notified
15 then at least the neighboring city administration would
16 also be made of aware of that. So I would like to think
17 that that's the exception.

18 BOARD MEMBER ROBERTI: What often happens is
19 that the jurisdiction in charge will rely on, say, an
20 earlier document like a CEQA notice and say well, that
21 covered everybody. I can't remember the particulars
22 here.

23 BOARD MEMBER EATON: It was a document that was
24 seven years old, if you remember.

25 BOARD MEMBER ROBERTI: Yes. Yes.

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1 BOARD MEMBER EATON: I believe it was in and
2 around your general area. It was seven or eight years
3 old that was relied upon, the document you're talking
4 about.

5 BOARD MEMBER ROBERTI: Right. And just to throw
6 in San Jose, which is a lovely place. If anybody has
7 crazier boundaries than Los Angeles, it's Santa Clara
8 County, which probably has the craziest set of
9 boundaries. It beats Orange or L.A. I would say that
10 you have a -- there is a potential problem, even if it's
11 not something that anybody is acting through design, and
12 what I'm offering to our Board Members is that I think we
13 were going to come back -- I don't know if we did. Maybe
14 counsel can help me with something, some recommendation,
15 but I do think that we do rely on prior notifications,
16 especially when it's cross-jurisdictional, something that
17 may not be any help at all, and for the specific thing
18 that's involved, the permit or whatever amendment we're
19 trying to get at, it becomes much tighter within the
20 confines of the city itself because --

21 MS. HUNTER: Senator Roberti, if I may, I think
22 the situation that you talk about is not limited to solid
23 waste facilities. We hear about that sort of the border,
24 a project on the border of one city and another in a
25 number of areas. What I will be happy to do is see if we

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1 can do a little research on what is existing law for
2 noticing, because it goes, as I said, way beyond solid
3 waste facilities.

4 Certainly CEQA would provide additional notice,
5 but let me see if I can do a little research and I'll get
6 back to you.

7 BOARD MEMBER ROBERTI: Maybe I'm wrong, but
8 doesn't the CEQA process usually take place long before
9 our permitting?

10 MR. BOYD: Not usually, Madam Chair.

11 MS. HUNTER: Not necessarily.

12 MR. BOYD: Because you really -- in order to do
13 adequate environmental review, you really need to know
14 what the project is. So without knowing what the project
15 is, you can't really do adequate environmental review and
16 so they need to be happening fairly closely together.

17 And I would also say that even though in some
18 cases the environmental review may be happening prior to
19 the issuance of a Conditional Use Permit, that the use
20 permit would still require public hearing notice to --
21 according to state law, all residents within 300 feet, at
22 least. Some jurisdictions do more than that.

23 MS. HUNTER: Darryl, residents within 300 feet
24 regardless of what city they're in.

25 MR. BOYD: You have jurisdictional boundaries,

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1 yeah. I'm sure that's --

2 BOARD MEMBER ROBERTI: That's another point,
3 Members, for another day. I guess the 300 feet doesn't
4 strike me as terribly much, especially if you have a
5 straight -- if there's no obstructions within that 300
6 feet, 400 feet away. As was the case in Norwalk, you
7 have homes and there's no obstruction at all except -- I
8 don't know what the river was that goes through there,
9 but that's hardly an obstruction for noise and for odor.

10 Just for our future reference, the 300 feet
11 notification is I hope something that the staff and our
12 Members maybe for next month, how we can deal with that.
13 I guess usually it's satisfactory but I don't think all
14 the time.

15 MR. BOYD: In some cases local jurisdictions
16 have done more than that and San Jose recently adopted a
17 public outreach policy that requires 1000 feet on
18 controversial issues, which would include solid waste
19 facilities.

20 I just wanted to close with identifying some
21 different methods that can be used for noticing in
22 talking about the 300 feet. That would be a mailed
23 public hearing notice. There also are -- you can publish
24 in the local paper. Many jurisdictions will actually
25 post the site. They'll post a hearing notice on the

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1 perimeter property lines of a proposed site so the people
2 driving by can know that there is something going on at
3 that location. With changes in technology, there's a lot
4 more utilization of web pages and so forth for local
5 folks to check out what's going on, either posting of
6 agendas or hearings notices and so forth.

7 There are also some informal practices that can
8 happen. One technique that we use in San Jose is we
9 actually send an early notice out when an application is
10 first filed to the leadership of the local neighborhood
11 groups so that they know early on, even before -- long
12 before they get an actual public hearing notice that
13 there is a project that is being proposed.

14 Lots of jurisdictions also utilize community
15 meetings that would be organized. Again, those would
16 typically happen prior to the actual public hearings,
17 even before the Planning Commission or the City Council
18 and again would be more informal and allow for greater
19 interaction between residents and staff and the project
20 applicants.

21 With that, Madam Chair, I'll close unless
22 there's any other questions.

23 CHAIR MOULTON-PATTERSON: Thank you very much.
24 Just in closure for me, and mainly this is to Ms. Hunter,
25 it's your understanding the 300 feet would be -- most

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1 cities would consider a neighboring city in that; is that
2 correct?

3 MS. HUNTER: I am pretty sure. I believe that's
4 state law.

5 CHAIR MOULTON-PATTERSON: It's state law.

6 MS. HUNTER: I've written myself some notes and
7 we'll do a little research, and I'm sure your staff will
8 as well, and hopefully in a little bit get back to all of
9 you with what we have found.

10 CHAIR MOULTON-PATTERSON: Thank you.

11 MS. HUNTER: I am not the land use lobbyist for
12 the League, so I can't give you specifics.

13 CHAIR MOULTON-PATTERSON: Okay. We appreciate
14 that because I know it's come up a lot.

15 BOARD MEMBER ROBERTI: But I bet you know a lot
16 about it.

17 MS. HUNTER: Pardon me?

18 BOARD MEMBER ROBERTI: But I bet you know a lot
19 about it.

20 MS. HUNTER: I wing it nicely.

21 (Laughter)

22 BOARD MEMBER ROBERTI: So you're very good.
23 Okay.

24 CHAIR MOULTON-PATTERSON: Thank you.

25 MS. JONES: As a process check-in here, we said

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1 we'd break about 11:00. If we could listen to Dennis,
2 hear from Dennis for about the next five minutes, could
3 we take a break immediately following that so that our
4 court reporter especially gets a break? Thanks.

5 CHAIR MOULTON-PATTERSON: Thank you.

6 MR. FERRIER: Good morning, Board Members and
7 Madam Chair. My name is Dennis Ferrier. I'm the LEA for
8 the City of San Jose. Thank you for the opportunity to
9 speak to you this morning.

10 As far as where the LEA process intersects the
11 planning process, in my mind it breaks down into two
12 different tracks -- one discretionary, the other
13 non-discretionary or ministerial permits. The
14 discretionary permits I think are pretty straightforward.

15 We go -- normally we follow our Planning
16 Department. They would take the first discretionary
17 action with a local land use permit. I don't know that
18 that's the case in all jurisdictions, but in our case it
19 is and it's been my experience that local land use is
20 always the lead. Where it's become a little bit muddled
21 in the past few years, I think since '95, has been with
22 the movement towards more ministerial and
23 non-discretionary types of permits, in that case the
24 Planning Department may be the lead. In some cases they
25 may already have those CEQA pieces in place and the local

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1 land use pieces in place by the time the project comes to
2 us for issuance of a non-discretionary permit.

3 I think Darryl covered quite a bit of the local
4 land use process. We depend increasingly on our local
5 land use permits, particularly with the full Solid Waste
6 Facility Permits for those kinds of mitigations that are
7 not spelled out in state minimum standards.

8 The -- there are certain -- I think 95 percent
9 of the projects follow this pattern. I think there are
10 projects that come forward that don't meet this
11 particular mold. There are additional problems I think
12 that aren't addressed in this process. One that I've
13 seen and it's problematic is that we can issue all of our
14 permits and be perfectly in compliance with plenty of
15 buffer areas around these solid waste facilities and
16 experience encroachment over the years where we have
17 things that are built up right up next to a facility and
18 that's problematic for both parties. I don't know what
19 the answer there is. There was a movement to try to get
20 the Board and I think local land use authorities together
21 on that issue several years ago in the legislature, but
22 it never really came to fruition.

23 The LEA focus is primarily on operational focus
24 so we're looking -- we're looking -- we're involved in
25 the CEQA process. We give feedback. We're noticed. We

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1 constantly work about with our planners to be sure that
2 these documents are circulated through the State Clearing
3 House and specifically to the Board, and many times we
4 request that the documents be sent directly to the Board
5 to give them a heads-up to try and get these documents
6 reviewed far enough in advance that we can resolve some
7 of these environmental review concerns before we get up
8 to the point of determining a complete application
9 package.

10 The laundry list in 21570 of the California Code
11 spells out all the items that we have to address as part
12 of a full Solid Waste Facility Permit. Each of the
13 subsequent tiered packages for composting and transfer
14 and processing have their own time lines and processes.
15 It gets a little awkward to -- you really have to know
16 what kind of material you're dealing with and what
17 volumes to know exactly what process you're going to be
18 going through. I think that's a departure from maybe the
19 process prior to tiering in 1995 where we had basically
20 two permits, a full Solid Waste Facility Permit and then
21 the Small Volume Transfer Station Permit or Large Volume.
22 Those were both discretionary permits at that time. Both
23 permits triggered -- in and of themselves triggered the
24 need to do environmental clearance on those discretionary
25 permits. The ministerial registration on down are not

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1 triggering that.

2 In our -- in my experience I've found that we
3 need to educate our planners constantly as people --
4 different people become involved in these projects in the
5 Planning Departments. The -- I think that's one of the
6 LEA's roles, to work very closely with them whether it's
7 ministerial or discretionary to look at the local land
8 use, look at the zoning, make sure the elements are in
9 place. Now although it is not required in registration,
10 we do work for the local agencies and they look to us for
11 input on activities that involve solid waste handling or
12 processing or disposal.

13 I've been told to keep my comments short so I'm
14 going to stop here. If you have any questions for me,
15 I'll take them now or later, however you prefer.

16 CHAIR MOULTON-PATTERSON: I don't see any
17 questions. Thank you very much, Mr. Ferrier.

18 Mr. Paparian.

19 BOARD MEMBER PAPARIAN: I would assume you have
20 a pretty good sense of a lot of the permits that are
21 going to be coming up in the next year or so, even though
22 you don't have the documents.

23 MR. FERRIER: We think we do. We're always
24 surprised by the -- I think the main element -- I think
25 the industry, the solid waste industry is pretty well

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1 educated on what they need to do. I think where we get
2 caught by surprise sometimes are on the facilities that
3 fall right on the lines and 10 percent and source
4 separated, with the operators who are beginning, who may
5 not know any of the state laws or regulations regarding
6 permitting.

7 BOARD MEMBER PAPARIAN: This is for I think our
8 staff. Do we have the same sort of sense that they would
9 have in terms of what might be coming up in the next
10 year?

11 MR. DE BIE: We depend fully on them and where
12 they are, and if they're up on it then we tap into that
13 staff to staff to see where they are. When we get looped
14 in in terms of official notice is that we get a copy of
15 the application. So when the LEA gets an application, we
16 get a copy of that through the LEA. So that's when we
17 have a record that there's something coming up in a time
18 frame, but prior to that in terms of -- you know, sort of
19 what's on the horizon, we depend on the LEAs to look at
20 that.

21 The other trigger there that gives us some clue
22 is the five-year permit process that we'll be talking
23 about in a little bit. That leads into a potential
24 application coming forward so we can get another clue
25 about what's on the horizon. I think we do a pretty good

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1 job connecting with the LEAs and tapping into their
2 resources and their understanding, but as Dennis pointed
3 out, there's always something that pops up that no one
4 was expecting.

5 BOARD MEMBER PAPARIAN: In terms of -- let's go
6 back now to what you can expect over the next year or so.
7 If I were a member of the community that might be
8 affected by one of these permit applications that might
9 be coming up, even though you don't have the permit
10 application in your hands but you kind of know it might
11 be coming, would I as a member of the public have a way
12 of knowing that something like that might be happening or
13 is it the receipt of the application that really triggers
14 anything?

15 MR. FERRIER: You're talking about notice before
16 they've made any formal application to either the
17 Planning Department or the LEA? Typically what will
18 occur, we're out there at least monthly, usually more
19 frequently than that. We know the operators and managers
20 of the landfill. As their markets change and their
21 business needs change, they'll come to us and explain,
22 "This is what we may think we want to do down the road.
23 What do we need to do?"

24 In most cases in my experience we've been in the
25 position of educating a lot of the operators on how to

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1 deal with the application process for our Planning
2 Department. We normally steer them to Planning first and
3 ask them to prepare some kind of an initial study or
4 project description, and then based on that they would
5 either go forward to do additional environmental review
6 or they would be told it's not necessary, it's already
7 encompassed in their existing documents.

8 In some cases -- landfills, they don't tend to
9 change overnight. They change, but they don't tend to
10 change quickly. I think the other facilities have been
11 more problematic for us in the respect that a small
12 operator may want to come in and put an operation in --
13 that's at a much lower tier, and we're not necessarily as
14 closely involved in that process because we don't write a
15 discretionary permit. We -- we don't have as much
16 ability to address maybe specific impacts.

17 As far as noticing, now back to your question,
18 the Planning Department as the lead agency with us
19 participating in the review would take -- would take on
20 that noticing responsibility. We as an LEA do not do a
21 mailed notice. If we were lead, we would work again --
22 in our case we would work with our local Planning
23 Department to notice everybody within a thousand feet.

24 MS. HUNTER: Perhaps another way of looking at
25 it is if somebody has an idea, whether it's a lumber yard

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1 or a transfer station or a small processing facility they
2 think they want to put out there, unless it's informally
3 discussed within the business community or their
4 neighborhood community when it's sort of just a germ in
5 their idea -- and it doesn't matter what kind of project
6 it is -- I don't know that there is any formal structure
7 for you as a citizen to know about it until they
8 beginning to through the process. It doesn't matter
9 whether it's a solid waste facility or a grocery store or
10 a gas station or whatever.

11 BOARD MEMBER PAPARIAN: The early notification
12 that you mentioned, though, that was triggered by a piece
13 of paper coming into your hands; was that right?

14 MR. FERRIER: Well --

15 BOARD MEMBER PAPARIAN: You described an early
16 notification process for local neighborhood groups and
17 organizations.

18 MR. BOYD: What I was talking about, yes. That
19 would be when an application was actually filed. Within
20 the first week or two weeks we would send out an early
21 notice to say we have an application on file for a solid
22 waste facility at this location, and that notice would go
23 out to potentially interested neighborhood groups, the
24 leadership of the neighborhood groups.

25 BOARD MEMBER PAPARIAN: Okay.

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1 CHAIR MOULTON-PATTERSON: Thank you.

2 MS. HUNTER: I'd like to make one concluding
3 comment, and this is distinguishing the local land use
4 permit from the Solid Waste Facility Permit. Solid Waste
5 Facility Permits must meet state minimum standards. One
6 thing that we at the local level and the lobbyists for
7 the League and CSAC have been very vigilant in
8 protecting, and that is our land use authority, that is
9 something that we will die on our sword over and our
10 statutory authority through the Conditional Use Permit
11 process, the land use permit, to require stricter
12 standards. There have been -- and stricter conditions.
13 I think both Dennis and Darryl alluded to that.

14 There have been times over the last couple of
15 years when we have through legislation revisited, it
16 seems like again and again, Solid Waste Facility Permits
17 process and there have been attempts by some of our
18 friends in industry, occasionally, to limit our land use
19 authority and we've always been successful in removing
20 that language from proposed legislation. And it doesn't
21 matter whether it's a solid waste facility or it's a gas
22 station or it's a lumber yard. We need to be able to
23 condition it based upon traffic, based upon noise, a
24 whole variety of things, and we guard that very
25 jealously. I just wanted to close with that.

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1 CHAIR MOULTON-PATTERSON: Thank you.

2 MS. JONES: Ready for a break?

3 CHAIR MOULTON-PATTERSON: Yes.

4 BOARD MEMBER JONES: Can I just ask one real
5 quick question of Mark? The notice that you were talking
6 about is like if Dennis gets a -- not so much an
7 application but a notification of an application, that's
8 when they notify you that something is in the works?

9 MR. DE BIE: That part is pretty informal. The
10 way the Permitting Inspection Branch is set up, each
11 staff has a jurisdiction assigned to them and it varies
12 in terms of how in touch they are whether that -- how
13 much they're communicating with each other. But what
14 I've asked staff to do more of is connect with the LEAs
15 more often any time they get any indication that there's
16 something going on, early consultation meeting,
17 something -- a draft of the five-year permit review
18 looking like oh, we have to revise the permit, any kind
19 of signal flag that there's something coming up, that
20 that gets reported up to us so we can start planning for
21 it.

22 BOARD MEMBER JONES: And that's important
23 because it's not like a permit lands at the Waste Board
24 and we have 60 days to act on it because in fact, the
25 LEA's got I think 120 or --

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1 MR. FERRIER: We have a completeness finding in
2 30 days and then it has to be up to the Board as a packet
3 in 55 days.

4 BOARD MEMBER JONES: 55 days.

5 MR. DE BIE: We'll be reviewing those for you.

6 BOARD MEMBER JONES: So it's like 80 days and
7 then the time it comes to us. I just think that's
8 important that we realize this did not just get delivered
9 via messenger.

10 MR. DE BIE: I think most of the time we do get
11 plenty of notice, but then there are times when we get
12 those standardized permits that we thought were a couple
13 months away and then for one reason or another they --
14 there's a hurry-up locally and they do get dropped on us
15 unexpectedly, earlier than later. So best laid plans are
16 we expect it in a couple of months and then it shows up
17 early and we have to deal with it.

18 MS. NAUMAN: Mr. Jones, we'll be addressing this
19 more as I indicated to you in the August workshop where
20 we'll be focusing on the Board's process of determining
21 completeness. You just heard an LEA tell you that they
22 have 30 days to determine completeness. We don't have
23 that same statutory provision. We just have our 30 or 60
24 days to bring it before the Board for action.

25 And while we sometimes have early notification

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1 that the permit may be on its way, there's also then the
2 issue of when the package gets here, what more work needs
3 to be done on the package before it's ready for your
4 consideration. We'll be reviewing that with you next
5 month.

6 BOARD MEMBER JONES: Right. But it's the LEA
7 that certified that it was complete whenever it got here.

8 MS. NAUMAN: That's true.

9 BOARD MEMBER JONES: So if it's not complete,
10 then we need to go after the LEAs for not doing their
11 job.

12 MS. NAUMAN: And we'll be talking about that too.

13 MS. JONES: Madam Chair.

14 CHAIR MOULTON-PATTERSON: Again I'd like to
15 thank Ms. Hunter, Mr. Boyd, Mr. Ferrier. We'll take a
16 15-minute break right now if that's okay with you,
17 Ms. Jones.

18 (Recess taken)

19 CHAIR MOULTON-PATTERSON: We're going to get
20 started again. If I can get everyone's attention, we're
21 going to start up. I will turn the meeting back over to
22 Ms. Jones.

23 MS. JONES: And we'll hear from Julie Nauman.

24 MS. NAUMAN: Madam Chairman, Julie Nauman
25 again.

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1 As we said in the beginning, we're going to take
2 a few moments at the end of each panel discussion to
3 review with you the information that you heard during the
4 presentation by staff and the panel and to seek any
5 direction or guidance you may want to provide staff at
6 this point.

7 With respect to the noticing panel, I think
8 there were a couple of issues that engendered some
9 discussion and that was the whole issue of the timing of
10 notice when we're looking at the related processes of
11 local land use approvals and Solid Waste Facility Permit
12 issuance, and secondly some discussion about the
13 appropriate distance for noticing as referenced to the
14 normal 300-foot requirement. There was some discussion
15 about that crossing boundaries, an offer from the League
16 of Cities to perform additional research and return.

17 Is there any further discussion from the Board
18 Members or indication of interest in pursuing any other
19 matters related to noticing or the local approval
20 process?

21 CHAIR MOULTON-PATTERSON: I don't see any at
22 this time. Thank you.

23 MS. NAUMAN: At this point then I'll turn it
24 back over to Mark to begin the next segment.

25 MR. DE BIE: Can you hear me in if I use this

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1 remote mike? Yes. Good.

2 So we just heard about the local approval
3 process and how that is linked to the Solid Waste
4 Facility Permit process, and I thought the panel did an
5 excellent job. Thank you, panel members.

6 To lead into the Solid Waste Facility Permit
7 process, a little bit about what triggers the permit
8 process in terms of a new permit and a revision to a
9 permit. To trigger for a new permit, obviously if you
10 have a brand-new facility that never existed before you
11 would trigger the new Solid Waste Facility Permit process
12 or process to issue a new permit.

13 However, there's other times when a new permit
14 may come into play. For example, when a facility moves
15 from one tier to another, a compost facility first starts
16 operating under a registration permit and now moves into
17 a standardized permit level. There would be a permit
18 process that would be established or developed or begun
19 to issue a new standardized permit, a new permit. So
20 it's not a revision to an existing permit, it's issuance
21 of a new permit.

22 And as Bob Holmes indicated earlier today, as we
23 go through the slotting of different facilities and waste
24 types into the regulatory tier, we may bring in
25 activities out there that are not currently regulated

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1 under a Solid Waste Facility Permit, that are up and
2 running but may now need to come in and get a permit
3 where they before were not obligated to have a permit.
4 So those things, those three main areas may trigger the
5 need for a new permit.

6 In terms of revision, the way the regulation and
7 statute is laid out is if an operator anticipates that
8 he's going to be changing his operations to some extent,
9 that that may trigger a revision to the permit. And
10 we'll talk more about how it might not necessarily
11 trigger a revision to a permit. There are other ways of
12 dealing with minor small changes to a facility other than
13 a revision.

14 There may be unauthorized changes. An LEA goes
15 out and inspects a facility and finds they're doing
16 something different, so the operator hasn't stepped
17 forward and asked for a change to take place but already
18 went ahead and implemented the change and he's discovered
19 by the LEA. That may lead to a permit revision into the
20 future.

21 And the five-year permit review can lead into a
22 permit revision, and that's what I want to start focusing
23 on in a minute, but before that a little graphic here to
24 explain again how we can flow from one to the other. On
25 the top box there on the left you have the anticipated

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1 change of the operator. They can make that known to the
2 LEA in various ways. They can apply for a five-year
3 permit review; they can apply for an RFI amendment, the
4 Report of Facility Information amendment for those minor
5 types of changes, and we'll talk more about that; or they
6 can apply for a permit revision.

7 Depending on which avenue they go or which is
8 appropriate, eventually all of those can lead to a
9 revised permit. In the bottom left box in terms of
10 discovered changes, one of the steps is if the LEA
11 discovers the facility is already implementing a change,
12 they would be obligated to issue a notice and order that
13 indicates that the facility is out of compliance with
14 their terms and conditions on their permit. At times
15 those notice and orders can be written to allow that
16 change to continue to be implemented while the permit
17 process unfolds and that is what we'll eventually talk
18 about in terms of the Permit Enforcement Policy.

19 After lunch we'll get into that discussion on
20 how that is possible to allow a change to occur under an
21 enforcement order without the permit being revised.
22 Again, depending on what triggers are there, you may be
23 looking at an application for a five-year permit review,
24 an RFI amendment, or a permit revision.

25 In terms of the permit review, I want to just

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1 started into this talking about the five-year permit
2 review. We'll lead into the RFI amendment piece and then
3 the permit revision piece. In terms of the five-year
4 permit review, the requirements there are outlined in
5 regulation and you can see those in front of you.

6 The requirement is that all permits be reviewed
7 at least every five years. They could be reviewed
8 earlier than five years, and that is done and does occur,
9 but the minimum requirement is at least every five years.

10 The LEA, the EA, Enforcement Agency, about -- or
11 not about -- at least 180 days prior to the anniversary
12 date of that permit being issued is to notice the
13 operator that they need to apply for a five-year permit
14 review. The operator then submits an application 150
15 days prior to that anniversary date.

16 When the application comes in, it is to include
17 the changes, any changes in design and operation at the
18 facility, any updates to that technical document. The
19 Report of Facility Information should be included in that
20 application, and if it's a disposal site they're also to
21 include estimates on site life as well as capacity.

22 The LEA then takes that information provided in
23 that application for five-year permit review and looks at
24 that information and all the other information available
25 to them -- hopefully they're looking at everything out

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1 there -- and eventually will put together a report called
2 the five-year permit review report. They are to put that
3 report together and send it to the operator as well as
4 the Waste Management Board 150 days after they received
5 the application for the five-year permit review.

6 So basically in and around the anniversary date
7 of that permit issuance they should be finalizing that
8 report and sending it to the Board as well as the
9 operator. That sort of refers to what Member Papanian
10 was asking about is the Board will see that five-year
11 permit review report and in there there may be an
12 indication of what's going to be required in terms of a
13 permit revision for that site. So that would be one of
14 our first indications that something is going on with
15 that site in terms of a permit action.

16 This next slide is kind of a graphic to outline
17 those time frames and the steps and what leads to what in
18 terms of the 180 days, 150 days, and again the 150 days
19 to finalize the report.

20 A little bit different for the standardized
21 permit. That was for the full permit. For the
22 standardized permit, the requirement is in regulation and
23 there's a trend here in standardized that all the time
24 frames are narrowed compared to the full permit process.
25 Here's a subtlety too. It's the Waste Management Board

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1 and their staff that notices the operator that the
2 anniversary date for the standardized permit is coming up
3 and that is required at least 60 days out.

4 Now, we haven't really had to encounter that and
5 how that looks and how we notice operators because very
6 few standardized permits are more than five years old.
7 As Bob Holmes pointed out, the tiered structure is fairly
8 new and so we haven't really -- we're approaching rapidly
9 those five year dates for some of them but we haven't
10 really encountered this as yet. So I can't tell you any
11 more about five year permit reviews for a standardized
12 permit except for what we have here in terms of the
13 requirements.

14 30 days prior to that issuance date, that
15 anniversary date, the operator is to do one of two
16 things -- provide the LEA, not the Board, the LEA with
17 either a certification that says nothing has changed at
18 my site, I'm the same and I'm certifying that I haven't
19 changed anything over the last four years, five years or
20 whatever it might be; or they would submit an application
21 for a new standardized permit. There's no option in reg
22 or in statute, certainly not in statute but in reg to
23 revise a standardized permit. It seems if you read the
24 regulations the only option is to go through a new
25 application process and issue a new standardized permit.

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1 BOARD MEMBER JONES: Mark.

2 MR. DE BIE: Yes.

3 BOARD MEMBER JONES: The LEA would be able to
4 agree with that because he would have been doing
5 monthly -- he or she would have been doing monthly
6 inspections and not seen the change to let them operate
7 as a standardized permitted facility.

8 MR. DE BIE: Right.

9 BOARD MEMBER JONES: Right.

10 MR. DE BIE: And the next one is again a graphic
11 showing the time frames involved with the standardized
12 permit.

13 But I think what you need to understand in a
14 five-year permit review for a full permit there are
15 several options on what you can do after you've reviewed
16 that permit whereas in standardized it seems the only
17 option right now is to go ahead and renew the permit; not
18 revise the permit but issue a new permit that would
19 require them to go through the whole process again.
20 There is that option to do a certification where you
21 don't have to touch anything and you can go another five
22 years without touching the permit.

23 In terms of what the potential results are in
24 the five-year review, the findings that the LEA may find
25 is that after reviewing the submittal by the applicant

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1 and all the supporting information, that there's no
2 action required, that the facility is operating within
3 the terms and conditions of its permit, there has not
4 been any changes that require the permit to be addressed,
5 that all of the minor changes in terms of the details
6 have been addressed in previous RFI amendments which have
7 already been approved.

8 Another finding that could come out of the
9 five-year permit review is that there are some changes
10 that are planned, anticipated, that need to be addressed
11 but they're minor enough where they're not affecting the
12 terms and conditions of the permit and they can be
13 addressed through an RFI amendment. So the LEA, through
14 that five-year permit review, can direct the operator to
15 submit RFI amendments to address those minor changes.

16 The LEA could also find that a permit revision
17 is required and that basically the threshold there is
18 that there's been some change to the terms and conditions
19 of the permit that would require them to revise the
20 permit. Another finding is that the proposed changes or
21 the changes that are already occurring at the site that
22 are uncovered through the five-year permit review are not
23 going to be allowed by the LEA.

24 So if the applicant, the operator has submitted
25 a request in their five-year permit review application to

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1 implement some changes, there is an option to notify the
2 operator that the LEA will not approve those, and
3 basically one of the main reasons for not allowing those
4 is that they're not consistent with standards, that in
5 implementing that change the operator may become
6 inconsistent with standards, operating standards, design
7 standards.

8 For a full permit, talking about how some of
9 these changes that are uncovered in the five-year permit
10 review, one of the options, as indicated, is to address
11 them through an RFI amendment. So just to summarize a
12 little bit, the applicant, the operator has applied for a
13 five year permit review. The LEA has provided that
14 report. In that findings of the report it says that
15 there are some changes that are anticipated at this
16 facility and they can best be addressed through an
17 amendment to the technical document, the RFI.

18 So the LEA would then require the operator to
19 apply for an RFI amendment. The LEA would then review
20 that application with those amendments included and they
21 need to make three findings -- basically that the changes
22 that are being requested in this RFI amendment are
23 consistent with a CEQA document; that the LEA has
24 determined that the changes are going to be consistent
25 with all requirements; and here is the sort of the

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1 crucial one, that the changes do not conflict with the
2 permit terms and conditions.

3 An example of that might be the operator
4 requests a change to the facility in that they instead of
5 using soil they want to use green material for
6 alternative daily cover. The LEA would review that, say
7 the use of alternative daily cover is covered in a CEQA
8 document, the use of this particular daily cover is
9 covered in the operating requirements for a facility.
10 There are standards and this proposed change is in line
11 with those standards. Then they would look at the terms
12 and conditions of the permit.

13 When we had facilities starting up with a lot of
14 ADC, there were permits that said in the permit itself,
15 not in the technical document, in the permit itself thou
16 shalt cover with soil, and there was a condition in the
17 permit saying you must cover with soil. If an LEA is
18 looking at this request for ADC and sees in the permit
19 that there's a requirement to cover with soil, they
20 should not allow that change to occur until the permit is
21 revised to address that.

22 But now we have many permits that are out there
23 and are silent on whether or not soil must be used or
24 some other material could be used. An LEA could look at
25 that permit and say it's silent here, it does not direct

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1 or condition this particular operation relative to the
2 use of soil or other material, therefore I could allow
3 this change to occur without revising the permit in that
4 situation. There's a trigger there in terms of is there
5 something in the permit in terms of the term or a
6 condition that this change would be inconsistent with in
7 determining whether or not they could go forward with
8 that RFI amendment.

9 BOARD MEMBER JONES: Can I ask a question?

10 MR. DE BIE: Certainly.

11 BOARD MEMBER JONES: If the permit said that it
12 allowed recycling activities at the landfill and didn't
13 specify what they were but conditioned that they could do
14 certain things either on the face or -- would that --
15 let's say they went into a wood grinding operation or a
16 tire chopping operation or something like that, would
17 they need an RFI amendment or would the broadness of that
18 permit cover it?

19 MR. DE BIE: Well, that's a great question.

20 BOARD MEMBER JONES: That's why I asked it.

21 (Laughter)

22 MR. DE BIE: And we've had that situation. I
23 think when we were in that situation where the language
24 in the permit, the condition in the permit is open,
25 general and ambiguous, we've asked LEAs to go back and

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1 look at the CEQA document that supported that last permit
2 action and see if there's any more clarity that could be
3 gleaned out of that. Were they thinking about just cans
4 and bottles? Were they thinking about any kind of
5 recycling? Were they thinking about white goods? Is
6 there something more that we can look at to try to figure
7 out what they had in mind when that condition was
8 written?

9 Lacking that, I think you have pretty much an
10 open door there to say that could have included anything
11 and everything and so potentially an RFI amendment could
12 go through to allow that kind of operation to occur.

13 Now, if the CEQA document said no, it was quite
14 narrow, then we say yes, even though the permit is not
15 specific about that, that permit was written based on
16 this CEQA document, so you're looking at a new project
17 here and so maybe you need to look at a revision to the
18 permit.

19 Remember one of the criteria is that the changes
20 are consistent with the CEQA document. So if they were
21 comparing this change to a CEQA document and we're seeing
22 inconsistencies, they wouldn't be able to allow the RFI
23 amendment also, so there's a trigger there.

24 Okay. So that's the RFI amendment process. Now
25 talking more about the revision process that could come

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1 out of a five-year permit review. First of all, we're
2 looking at significant changes that trigger a permit
3 review. If a significant change is being proposed, it
4 cannot occur until it's authorized and that's through the
5 permit revision.

6 There's an application typically through the
7 permit revision. There's an application that's made 150
8 days before that change is to take place. When the LEA
9 gets that application, they're to review it and see if
10 that change that's being requested is in conformance with
11 statute and reg and also determine whether or not CEQA
12 review is there or is required. They do that within 30
13 days, and they inform the operator and the Waste Board
14 what they're going to do with that request.

15 They could say that the revision or the change
16 can happen without any touching the permit or the RFI.
17 It's already covered. It's there. We don't need to do
18 anything. That's atypical that you find yourself in that
19 situation. The LEA can determine that this request is
20 not consistent with standards and disallow it. They
21 could require a revision to the permit, and they could
22 also require additional CEQA to be made. So this is in
23 statute.

24 When you look at regulation, it looks like it's
25 a little more straightforward that when an application

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1 happens you're kind of forced to move in a certain
2 direction, but statute seems to indicate that there are
3 some options available to the LEA community. My reading,
4 my personal reading of this last part is that if you look
5 at the statute specifically is that to aid the LEA in
6 deciding whether they're going to allow this change,
7 maybe through an RFI amendment or a revision or to
8 disallow it, they can sort of begin a CEQA process and
9 use the CEQA process as a way of figuring out the way --
10 the appropriate approach to their decision on what to do
11 with this requested change.

12 The statute actually says that the LEA can do --
13 allow the change, disallow or require a revision or,
14 prior to making that decision, do CEQA. So if CEQA is
15 not already there, the LEA could go ahead and enter into
16 the CEQA process before making a definitive decision on
17 how to treat that request for a change.

18 Leading into our discussion this afternoon on
19 the Permit Enforcement Policy, I'll just whet your
20 appetite if it doesn't need whetting already with lunch
21 so close. At times an operator makes changes to the
22 design and operation of a facility prior to gaining
23 approval. When that's discovered by the LEA, they have a
24 couple options that they can take.

25 They can issue a cease and desist order and

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1 require that operator to ratchet back to what they're
2 required in their terms and conditions in their permit,
3 but because of the Permit Enforcement Policy that was set
4 out almost over a decade ago or nearly a decade ago,
5 there seems to be the climate out there that LEAs also
6 have this option to write a notice and order to allow the
7 facility to continue violating their terms and conditions
8 of their permit while they work towards revising their
9 permit to make it consistent, and we'll be talking about
10 that in terms of the Permit Enforcement Policy, how that
11 has been set up and how it has been used in the last ten
12 years.

13 Any questions? Yes.

14 BOARD MEMBER MEDINA: What triggers an early
15 inspection? What triggers an earlier review?

16 MR. DE BIE: Earlier than the five years?

17 BOARD MEMBER MEDINA: Yes.

18 MR. DE BIE: The LEA -- well, the operator may
19 say I'm planning some big changes here. I'm not sure if
20 it's going to be able to handle it through an RFI
21 amendment or a permit revision, so I'm going to apply for
22 a five-year permit review here, have a comprehensive
23 overview of that facility, and the LEA will be -- through
24 their report required to make some findings on how to
25 address those proposed changes. The LEA may become aware

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1 of changes already occurring or beginning to occur and
2 say wait. I want to see how this change fits in with
3 every else you have planned into the future, so let's
4 start with an application for a five-year permit review
5 so we can kind of look at this comprehensively and make a
6 decision on whether or not it's going to be an RFI
7 amendment or a permit revision, or I'm not going to be
8 able to allow this.

9 So there could be a couple of situations that
10 may trigger that earlier review. There's nothing in
11 regulation or statute that says if these things occur
12 that you'll do a five-year permit review, but it does
13 hold out that it's at least five years. So it seems that
14 there is some flexibility to begin it earlier.

15 BOARD MEMBER JONES: Madam Chair.

16 CHAIR MOULTON-PATTERSON: Mr. Jones.

17 BOARD MEMBER JONES: Did I understand that we're
18 going to talk more about the cease and desist orders and
19 the notice and orders in the next -- after lunch or
20 whenever?

21 MR. DE BIE: Relative in how they fit into
22 permits and allowing or disallowing changes, yeah, but
23 not in a broad sense notice and orders and what they are
24 and how the process works, but just how notice and orders
25 are being used to allow facilities to operate outside

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1 terms and conditions and how that works.

2 BOARD MEMBER JONES: All right. For the sake of
3 brevity when we come back and we start talking about
4 that, I think we do need to just get a little bit broader
5 because a lot of times a notice and order is -- because
6 there is a change in the local community that has
7 basically facilitated or has made it encumbent upon a
8 facility to operate outside of its permitted capacities
9 because it's reflecting a change that nobody had known
10 about.

11 MR. DE BIE: Oh, certainly.

12 BOARD MEMBER JONES: That's very different than
13 somebody discounting the tipping fee and ignoring the
14 tonnage numbers. You know what I'm saying? And I think
15 that's real important for to us talk about because there
16 are huge differences because an LEA can set conditions
17 while it goes through a six-month or one-year process to
18 get a permit revision so that it's still operating with
19 an LEA's blessing and under their control, and I think we
20 owe it to the Board to talk maybe a little bit broader
21 about that because that's a big difference from going to
22 five bucks a ton and bringing in the world. That guy
23 needs to go to jail.

24 MR. DE BIE: So Jill --

25 MS. JONES: Can that be accommodated?

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1 MS. NAUMAN: Yes.

2 MS. JONES: Any more questions about the
3 five-year permit review process? Okay. Julie would like
4 to summarize.

5 MS. NAUMAN: Madam Chair, I think we'll wait and
6 summarize after the panel discussion on the PEP policy.
7 So at this point we're ready to break for lunch. It's my
8 understanding that the Board needs an hour and 45 minutes
9 for both lunch and your closed session.

10 CHAIR MOULTON-PATTERSON: Right. If the Board
11 could be back at --

12 MS. JONES: 1:15.

13 CHAIR MOULTON-PATTERSON: -- 1:15 and we'll meet
14 in closed session and we anticipate about half an hour.

15 MS. JONES: So we all will reconvene in this
16 room at 1:45. Great.

17 CHAIR MOULTON-PATTERSON: Thank you.

18 (Lunch recess)

19 CHAIR MOULTON-PATTERSON: We apologize for
20 being a little later than we thought. We just came out
21 of closed session.

22 Jill, I guess I'll turn it over to you.

23 MR. DE BIE: Before lunch we were talking about
24 the five-year permit review and some of the options that
25 come out of the five-year permit review in terms of what

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1 the operator would be directed to do. And we also talked
2 about situations where changes occur that have not been
3 requested or have not been put forward by the operator
4 but are being implemented at the facility so that there
5 is a change in the operation to the terms and conditions
6 of the permit and that is the Permit Enforcement Policy.

7 Sort of the way I view it is this was the policy
8 that sort of set the climate to allow and prescribe how
9 this kind of situation is to unfold. So we wanted to
10 spend some time going through the background of the
11 policy, describing the policy and then indicate how it's
12 being used -- was used and is being used today.

13 In terms of background, somewhere around 1987
14 the Board directed staff to look at why there were so
15 many permits out there that were outdated. You may be
16 aware that the majority of the first Solid Waste Facility
17 Permits from the State were issued in the late '70s. So
18 here we're at the late '80s, there's a five-year permit
19 review requirement but we're not seeing any permits being
20 reviewed and being brought forward. So the Board was
21 asking staff about that.

22 Staff did research and found that in a lot of
23 those old permits there were descriptions that looked
24 like limits but they weren't being viewed as limits. For
25 example, a permit written in the late '70s might say

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1 something like the facility currently receives 300 tons
2 per day. So when asked about that, an LEA would say
3 well, that's just a description of what was happening at
4 the site back in the late '70s, it's not a limit. Other
5 facilities were recognizing those as definite limits but
6 were not doing anything about those limits when the
7 facility started taking 400, 500, 600 tons per day. They
8 weren't coming back and requiring the operator to revise
9 their permit to address that situation.

10 So that became known to staff and to the Board
11 and so the Board directed staff to develop a policy to
12 address those issues. And the result was the Permit
13 Enforcement Policy that was designed to address
14 facilities that were exceeding things like daily tonnage
15 and disposal area and height and that was adopted in
16 November of 1990.

17 In this policy it makes it very clear that
18 permits do have limits. It also makes it very clear that
19 when the limits are exceeded, it's a violation that
20 requires some sort of enforcement action. It required --
21 this policy required this enforcement action, required
22 the operator to bring the facility back to a point where
23 it was consistent with the permit or have at least the
24 operation and the permit consistent with each other. It
25 made it clear, though, this policy was not to address

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1 other kinds of violations, state minimum standard
2 violations. It was only to be applied to the permit.

3 When the LEA was looking at what time frames
4 they would prescribe in that notice and order to bring
5 the facility into compliance, the policy indicated some
6 guidelines for the LEA to follow. They were to look at
7 what kinds of hardships would be involved with bringing
8 the facility back into compliance. They needed to look
9 at alternatives. They needed to look at the cost and the
10 benefits relative to public health and the environment
11 for each of those alternatives. They were to look at the
12 relative threat to the environment, as well as whether or
13 not the permit, the design operation that was causing the
14 permit violation was consistent with local planning.
15 There was a whole set of criteria that the LEA was to
16 look at when figuring out what kinds of time frames
17 should be applied.

18 Time frames could have been immediately. You
19 must come into compliance now, today. Other time frames
20 may say well, we estimate it's going to take maybe six
21 months to get all the paperwork together to apply for a
22 permit revision so your time frame for compliance is six
23 months. We had notice and orders that looked like that.

24 In the past and currently we have records that
25 indicate that LEAs have noted or have issued notice and

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1 orders for permit violations at least 60 times. These
2 were to deal with those old permits, but it has been used
3 to deal with permits where the facility has gone beyond
4 the limits in the permit since 1990, so modern permits,
5 ones that would you expect have definitive limits and not
6 these descriptions. This policy has been applied in
7 those situations.

8 Just to point out that in statute, as well as in
9 reg, there seems to be some flexibility that does allow
10 the LEA to write notice and orders other than to require
11 the operator to come back into immediate compliance.
12 Just to make a distinction, if -- statute is very clear
13 that if a facility is found to be operating without a
14 permit, the LEA is obligated to issue a notice and order,
15 a cease and desist order that says stop operating today.
16 You need a permit. That language is in there.

17 However, in 45005 that was added by AB 59 in
18 '95, you can see the language there that says that if the
19 operator is operating outside the -- or in violation of
20 an existing solid waste facility, they need to cease and
21 desist upon order of the LEA. So if the LEA orders them
22 but then says I want you to come into compliance in six
23 months, that seems to be something that statute doesn't
24 disallow but doesn't expressly allow either.

25 Again, we have this policy that's been followed

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1 that laid out, at least back in '90, the options
2 available to the LEA to address that situation.

3 We have assembled a panel, so I'll ask the panel
4 members to come up. And just to let you know, what we've
5 asked them to do is to address this Permit Enforcement
6 Policy and the current practice of the enforcement policy
7 as it is occurring today. We've asked the panel to, in
8 their remarks, think about are we today in a different
9 situation from back ten years ago when this policy was
10 developed. Does it still make sense today? Is it
11 consistent with the current statutory regulatory
12 situation with other kinds of policies that the Board has
13 out there? Should this policy be modified or remain as
14 it is or revoked altogether? And if they felt that it
15 should be modified, what ideas do they have about how it
16 ought to be changed? And if they feel that it might need
17 to be revoked or think that revocation is an option, what
18 kind of ramifications might appear resulting from that
19 revocation of the policy?

20 So we've asked industry as well as LEAs to serve
21 on the panel and we have Chuck White with Waste
22 Management, Rebecca Ng with Contra Costa LEA, Dan
23 Gambelin of Norcal Waste and Dan Avera with San
24 Bernardino LEA. We've asked them to share their thoughts
25 relative to these issues to three minutes each, and

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1 they'll be open to questions from the Board on this.

2 Any volunteers to lead off? Start with Chuck.

3 MR. WHITE: Good afternoon. Chuck White with
4 Waste Management. I represent a facility operator.

5 I wanted to preface this by letting you know
6 that the relationship that we've established with our
7 LEAs is alive and strong and working well, and as
8 exemplified this morning when I walked it, it seems to
9 operate at all levels including government affairs
10 because I walked in without a tie this morning thinking
11 this was going to be an informal workshop and the first
12 thing that was mentioned to me was by Justin Milan of the
13 LEAs saying, "Mr. White, you don't have any tie today,"
14 and I'm assuming I'm going to treat that as an area of
15 concern.

16 (Laughter)

17 MR. WHITE: I'll wait until I get back to the
18 office to see whether I get a notice of violation. I'm
19 hoping it doesn't develop into a notice and order or a
20 cease and desist. But anyway, the relationship is alive
21 and well.

22 The impression I got from this morning reminded
23 me of the old adage that all politics are local and it
24 really is true with respect to solid waste. All solid
25 waste is local and that's exactly the way the solid waste

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1 regulatory system is crafted in California, give primary
2 emphasis for the direct regulation of solid waste
3 activities, and we would certainly urge that the distance
4 should be maintained that has been developed over a
5 number of years.

6 With respect to the Permit Enforcement Policy,
7 we think it is also a matter of local direct control.
8 The Permit Enforcement Policy is really kind of a subset
9 of enforcement. All enforcement is typically either with
10 minimum standards, which are regulations adopted by this
11 Board, or they are in fact permit revisions that are not
12 expressly required in regulation but which are contained
13 in a permit.

14 So you basically have this Permit Enforcement
15 Policy which is a subset of all enforcement action
16 including violations of minimum standards, which the
17 permit policy does not address. We look at the Permit
18 Enforcement Policy as really a well-crafted balance that
19 has existed in place for a number of years.

20 It really on one hand puts emphasis that the
21 operator has to operate in compliance with permit
22 conditions. As an operator and as a competitor in a
23 marketplace, we certainly feel that is an important
24 situation. We don't at Waste Management want to see our
25 competitors operating in less than what the permit

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1 conditions or more than what the permit conditions imply,
2 but also on the other hand provides a framework for the
3 return to compliance in those situations where somebody
4 is out of compliance with permit conditions.

5 We find ourselves occasionally being caught
6 either because of an interpretive problem with the
7 permit, what does it really say, how do we get to clarify
8 -- to the point of clarifying that permit or in some
9 cases there's been a change in conditions where you've
10 got to extend your hours of service in need to respond to
11 a local waste management need. And so you want to be
12 able to do that without necessarily waiting for months to
13 happen. So there needs to be a process where you can
14 temporarily but have a clear and unambiguous process to
15 return to compliance.

16 The considerations that Mark DeBie pointed out
17 there on one of the over heads, the various compliance
18 time frames that you provide, they really are specified
19 in terms of what is a hardship, what is the waste
20 management alternatives, the cost and benefits to public
21 health, the posing of the threat to the environment,
22 public health and safety, and local government planning
23 objectives are all criteria spelled out in the PEP and
24 are those kinds of issues that the local government, we
25 believe, is most suited, most well suited to evaluate on

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1 trying to establish these notice and orders or the
2 stipulated orders for returning to compliance.

3 The PEP does provide a step-wise process for
4 providing first a notice and order and then perhaps a
5 stipulated order with a time schedule to return to
6 compliance. There's examples, many examples, a myriad of
7 examples.

8 For example, one situation that we came into a
9 couple years ago is where we had a facility that had a
10 permit conditions that said we could operate at a
11 thousand tons per day, and it turns out the facility was
12 beginning to operate as high as 1200 tons per day; not
13 every day but certain days of the week we went up to 1200
14 tons per day. We went back and looked at the CUP and the
15 CEQA document and the CEQA document clearly said that the
16 facility would operate on the average at a thousand tons
17 per day and would go up to a peak of 1500 tons per day.
18 We also had the -- that was the CEQA document. The CUP
19 basically was internally contradictory. In some cases it
20 said a thousand and in other cases at 1500. Again, we
21 had a permit at a 1,000.

22 This was a case where we had gotten to a point
23 of operating at 1200, and local government felt it was
24 appropriate, it was a safe and secure method of taking
25 this additional tonnage in, but we clearly had to go back

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1 and clarify -- more than amend the permit, clarify the
2 permit that it was addressing a thousand tons per day on
3 the average but to go up to a peak of 1500 tons per day.

4 So the course of action was to give us a notice
5 and order with a compliance time schedule to amend the
6 permit and revise it to be consistent with both the CUP
7 and the CEQA document.

8 So these are situations that give you a little
9 bit of flexibility to be able to return to compliance,
10 and again I want to emphasize that we believe the PEP
11 does that fine-tuning balance between a strict absolute
12 compliance with conditions, if you get a little bit off
13 kilter provides a clear and unambiguous schedule process
14 to return to compliance.

15 In terms of recommendations, we believe the
16 Board should continue to give strong deference to local
17 interpretation of what constitutes hardship, what
18 constitutes public health and safety and the environment.
19 We really don't believe there is any need to change the
20 Permit Enforcement Policy. It's served us well for ten
21 years. It's worked well. We think the Board's proper
22 role is to maintain the review, the oversight and the
23 assistance role to the LEA, and of course the Board has
24 its own ability, through its review process, to step in
25 if they feel an enforcement action has been

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1 inappropriate, and of course the Board does have the
2 appeal process laid out by AB 59 for reviewing any
3 enforcement action that is conducted by an LEA.

4 So again, our bottom line is we think the Permit
5 Enforcement Policy is working well and we urge its
6 continuation.

7 Thanks.

8 CHAIR MOULTON-PATTERSON: Thank you.

9 MS. NG: Madam Chair, Board Members, I'm Rebecca
10 Ng with Contra Costa County Environmental Health, the
11 LEA, and my comments will probably be quite a bit
12 shorter, but for the most part I agree with Mr. White.

13 The purpose of the policy as I see it was to
14 provide standard guidelines for the LEA for consistent
15 enforcement statewide. It was also to provide a
16 consistent procedure which would return the activities of
17 the terms of the permit instead of forcing litigation. I
18 think the PEP has accomplished those matters, those
19 concepts, goals.

20 And I believe that we should continue to have
21 the PEP. I think it's still needed. There's a constant
22 change of personnel in the LEA programs, as well as
23 on-board staff. It is a guidance document and I think it
24 has been used well. I do believe it is still consistent
25 with our statutes and regs as well as present board

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1 policy.

2 I agree with Chuck. It is -- I think it's a
3 fair, operator-friendly procedure in which to gain
4 compliance. It does outline issues that the LEA should
5 look at in order to determine time frames. It can -- the
6 LEA can determine that notice and order or a cease and
7 desist order should be issued and the facility should
8 stop operations immediately or they can choose to set
9 time limits of 90 days or 120 days depending on their
10 findings.

11 With that, I believe I've concluded my
12 statements. I do feel that we still need to maintain the
13 PEP, that if it were to be revoked we would probably have
14 more inconsistent application of enforcement throughout
15 the state.

16 CHAIR MOULTON-PATTERSON: Thank you very much,
17 Ms. Ng.

18 BOARD MEMBER JONES: Madam Chair, may I ask --

19 CHAIR MOULTON-PATTERSON: Mr. Jones.

20 BOARD MEMBER JONES: Ms. Ng, let me ask you a
21 question. Contra Costa County has an awful lot of things
22 going on in it every day. Besides the cease and desist
23 order because the cease and desist order or this Section
24 45005, the little piece that we had up on the wall tells
25 part of the story. I think also the part that's missing

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1 is that if a facility operates without a permit, then the
2 guidance document is for an LEA to issue a cease and
3 desist order; right?

4 MS. NG: Right.

5 BOARD MEMBER JONES: Which makes a whole lot of
6 sense, but it was just a piece that wasn't in there
7 because the way that was written, anybody that violates
8 gets a cease and desist. I think that's what's
9 bothersome to me is that do you see value -- I understand
10 your testimony that there's value in this policy. Is it
11 because it gives you the opportunity under notice and
12 orders to take care of fluctuations that happen within
13 communities, to be able to address a facility while a
14 permit application goes forward? Or where is the value
15 there for you as far as flexibility goes?

16 MS. NG: In my experience, the permit process
17 takes a very long time in most cases.

18 BOARD MEMBER JONES: Give me an idea from your
19 experience. The last major permit that you put through,
20 let's say a landfill, how long did it take you from start
21 to finish? How long did it take the operator from start
22 to finish with your help?

23 MS. NG: The last permit that I took through was
24 a permit revision. I would say from start to finish it
25 took two years.

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1 BOARD MEMBER JONES: For a revision.

2 MS. NG: Right.

3 BOARD MEMBER JONES: Not a new permit.

4 MS. NG: No.

5 BOARD MEMBER JONES: Just revising to conditions
6 that had changed or operating issues that needed to be
7 changed.

8 MS. NG: Actually, there were not that many
9 issues. The facility had continued to operate within its
10 permit conditions in terms of daily tonnage and so forth
11 and so on, but because of changes to their waste
12 discharge requirements as well as all the other
13 requirements to make a complete package such as
14 preliminary closure plan, financial assurances, going
15 through ensuring the conformance findings, land use
16 permits, everything, it took a very long time.

17 BOARD MEMBER JONES: For a revision. What's the
18 longest permit that you've ever had to bring forward?

19 MS. NG: That may have been the longest. I
20 think.

21 BOARD MEMBER JONES: You haven't had any of the
22 ten-year ones?

23 MS. NG: Well, I've gotten involved in the tail
24 end of a ten-year one.

25 BOARD MEMBER JONES: So you had two years on

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1 something that had been around for a while.

2 MS. NG: We had a new landfill in Contra Costa
3 County that opened in 1992 and I was on the tail end of
4 that, and that took I think eight years to permit.

5 BOARD MEMBER JONES: Okay. Thank you.

6 BOARD MEMBER EATON: I have one question.

7 Do you have any other programs in the county or
8 do you feel that this one is unique that allows for the
9 exceedance of a permit requirement while something is
10 being amended or revised? Is this fairly unique? I'm
11 just trying to think of is there any other program at the
12 county or local level where one can exceed a permit
13 requirement during the time it's being amended or
14 revised.

15 MS. NG: As Mr. Knight mentioned earlier, in our
16 environmental health programs we cover many other types
17 of programs, and Solid Waste Facility Permits are unique
18 in that a full permit is an individualized permit, but we
19 do have -- such as in the food program, you need a food
20 permit, a valid food permit in order to operate, but
21 there are instances where I know of some facilities that
22 do not have their valid permits and are still operating.

23 BOARD MEMBER EATON: Under color of authority?

24 MS. NG: Pardon me?

25 BOARD MEMBER EATON: Under color of authority?

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1 MS. NG: Generally it's the terms in which they
2 would be operating outside the -- because they don't have
3 a permit, would not be health and safety issues but be
4 more so administrative types of issues. So in that sense
5 there are permits -- there are facilities that operate
6 without permits.

7 MS. HUNTER: May I jump in and answer the
8 question?

9 BOARD MEMBER EATON: Absolutely.

10 MS. HUNTER: Yes, there are. There are a number
11 of instances where a business may have a permit from the
12 Water Board or from the local sewage treatment publicly
13 owned treatment works. They may have air permits and
14 they're updating the permit and they continue to operate,
15 or in the hazardous waste area, hazardous materials area,
16 they may be under some sort of -- they call it fix-it
17 tickets. It's not a cease and desist order. It's a
18 notice you need to fix this and this and they continue to
19 operate.

20 BOARD MEMBER EATON: In excess of their permit
21 requirements? That's the issue. That's the issue that
22 comes before us --

23 MS. HUNTER: I think in some instances --

24 BOARD MEMBER EATON: -- from time to time that
25 we get confused on and that we get questioned on by

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1 individuals as to why are we doing "X" and that's --

2 MS. HUNTER: The Water Board stuff definitely.

3 MR. WHITE: From my perspective, the rule is
4 generally that all permits have a process by which the
5 enforcement agency in response to that permit, whether
6 it's hazardous waste or air or water, has a process for
7 returning to compliance, and it's really at a
8 discretionary level as to if it's a huge violation where
9 there's human health, the environment being compromised,
10 bam, you shut it down and everybody supports that.

11 It's a judgment call and it's really hard to
12 write a manual of practice I think ahead of time
13 envisioning all the different combinations and
14 permutations of events, and that's really why the local
15 -- and I think the Permit Enforcement Policy really
16 envisions that because it lays out those five criteria,
17 the hardship, the alternatives, the public health and
18 safety, all of which have to be factored by the people
19 closest to the very issue, that is local government, to
20 figure out what is an acceptable schedule. Should you
21 return to compliance in two weeks, two months or six
22 months depending on the nature of the situation and the
23 nature of the harm?

24 I would hate to see some kind of very rigid
25 policy that would basically remove that flexibility and

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1 the ability to respond to individual conditions at the
2 local level. And the Board always has the authority to
3 step in over the LEA if, for any reason, you feel they're
4 not exercising appropriate common sense or prudence in
5 responding to a violated condition. That's really the
6 way it's set up and structured. I think it works pretty
7 well.

8 MS. HUNTER: This is an area that's been the
9 subject of legislation last year, some cleanup
10 legislation this year dealing with Water Board and
11 Regional Water Quality Control Board permits for
12 dischargers and they have time -- there are cease and
13 desist orders. There are time schedule orders that get
14 them to come back into compliance yet they're still
15 operating with the caveat that if it's eminent public
16 health and safety danger, they're shut down and should
17 be.

18 MS. NG: I think that's one of the values of the
19 PEP. It does list the criteria in which we can evaluate
20 the situation and determine what kind of time frames we
21 can give the operator.

22 CHAIR MOULTON-PATTERSON: Thank you, Ms. Ng.

23 MR. DE BIE: I wanted to respond to Mr. Jones's
24 observation. In my opening remarks I did try to make a
25 distinction between a facility operating without a permit

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1 and cease and desist in this situation where you have a
2 permit and you're violating terms and conditions.

3 I also wanted to bring something to the
4 conversation since we're starting the dialogue here.
5 There had been observations by the Board Members about
6 the perception of a rubber stamp to a permit revision
7 because what was being approved in the permit was already
8 occurring under a notice and order.

9 It's the PEP process that is creating that
10 situation where permits are coming up to the Board for
11 concurrence where the facility is already operating at a
12 certain tonnage under this notice and order. So I don't
13 know if I made that connection in my opening remarks that
14 that's a piece of it.

15 Relative to the findings that are outlined in
16 PEP, my understanding is those were outlined back in '90
17 to deal with, again, the situation where you had old
18 permits that weren't being updated. And where the sense
19 was ten years ago, there weren't a lot of alternatives
20 available to deal with increased tonnage and that sort of
21 thing.

22 So I've asked the panel members, the next set of
23 panel members, to talk a little bit about are we in the
24 same kind of situation that we were ten years ago in
25 terms of number of alternatives or ways of dealing with

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1 things like increased tonnage or, you know, if a site --
2 you know, ten years ago there weren't that many transfer
3 stations. There's many more now. If they're confronted
4 with a request to increase by a thousand tons, couldn't
5 some other transfer station deal with that. Is that the
6 situation or are we still in a very similar situation
7 that we were ten years ago.

8 So I'll ask the panel members maybe to address
9 that to some extent.

10 BOARD MEMBER JONES: Can I ask a question real
11 quickly, Madam Chair? Ten years ago, the requirements
12 under Subtitle D to close down small landfills had not
13 kicked in and isn't part of this mechanism as you -- when
14 we've gone from 20,000 landfills in the United States to
15 somewhere around 2200 in the United States. It's a
16 pretty drastic drop in landfills. So in '93 is when you
17 had to shut down or comply with Subtitle D and a lot of
18 facilities shut down.

19 Didn't this give the opportunity for people that
20 when a landfill or facility is shut down in a region and
21 that waste got redirected to a conforming landfill that
22 they could deal with it under a notice and order and be
23 able to stay regulated but take care of the waste that
24 Subtitle D created?

25 MR. DE BIE: Certainly having PEP in place and

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1 that understanding allowed a lot of landfills to make
2 that transition. Certainly. Subtitle D is in place and
3 we're -- you know, we don't see a lot of new landfills
4 coming forward and that sort of thing. So I'm just
5 trying to get to a better understanding for the Board
6 Members on does it still make sense ten years later. And
7 I think in some regard with the reduced amount of
8 landfills, yes, it probably does. But then with transfer
9 stations or compost facilities increasing tonnage, does
10 it make sense for those types of facilities. There might
11 be other alternatives available to deal with that
12 wastestream.

13 MR. GAMBELIN: Madam Chair, Members of the
14 Board, Don Gambelin with Norcal Waste Systems.

15 I want to start off by trying to answer that
16 question to the reasons why the policy was first put into
17 place and still exists, and I think absolutely, yes.
18 Those conditions are in place and those conditions being
19 do permits sometimes become past due for revision. They
20 do. Do permit terms and conditions sometimes need to be
21 changed or modified without a full permit revision for
22 sometimes local necessary conditions and I think
23 absolutely yes, the answer is again.

24 Some of the other members of the panel spoke of
25 the flexibility that the Permit Enforcement Policy

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1 allows. I think the Permit Enforcement Policy not only
2 allows flexibility but it's an absolute necessity in some
3 cases.

4 Again speaking from an operator's perspective,
5 our primary goal day-to-day is to continue to provide
6 service to our customers. Those customers might be
7 members of the public. Those customers might be a
8 municipality for which we hold a contractor franchise
9 agreement and for which a local health department is
10 fully dependent on our operations to continue to provide
11 waste disposal services. That basically gets down to
12 taking the garbage off the streets.

13 I tried to take a look at this from another
14 perspective, and that was what if the Permit Enforcement
15 Policy was not in place. What if a permit at a specific
16 facility becomes past due and that facility receives a
17 cease and desist? Is it wise to automatically remove
18 sometimes a very large operation from the solid waste
19 infrastructure that is necessary in order for solid waste
20 again to be managed appropriately for protection of
21 public health and safety and the environment on a
22 day-to-day basis?

23 I think when I said the Permit Enforcement
24 Policy is a necessity, it's to make sure that you don't
25 have some closure of a facility that a community may

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1 absolutely need. In that light, I think the Permit
2 Enforcement Policy is consistent with statute regulations
3 of the Board policies. I think -- I believe, at least
4 from my perspective, it recognizes again this critical
5 public service or critical infrastructure role that solid
6 waste facilities often play, and that through this notice
7 and order process, due diligence is given to continuing
8 protection of public health and safety, continuing
9 protection of the environment and a compliance schedule
10 in order to obtain a revised permit.

11 So all of those factors are in play and I
12 believe that above and Beyond anything else, that's what
13 the Board is focused on, and that is protection of public
14 health and safety and the environment.

15 Should it be modified? I don't see a need to
16 modify right now. I think, reflecting what Chuck White
17 said from Waste Management, it keeps it at the local
18 level where local conditions that could affect public
19 health or whatever can be most appropriately considered.
20 And we certainly support the continuation of that
21 happening at the local level.

22 Again if it for some reason was to be revoked,
23 how would you address a facility that's permit is past
24 due or across town closure of another transfer station
25 and all of a sudden the transfer station you're operating

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1 has to double its capacity overnight in order to remove
2 the waste from the streets? Would that be wise to
3 warrant a cease and desist for the one that might be
4 exceeding the permit limit then or is it more appropriate
5 to continue this Permit Enforcement Policy?

6 Again, we certainly would like to see this kept
7 in place. I think it is an absolute necessity as well as
8 providing the flexibility to continue to provide the
9 proper enforcement at the local level.

10 Thanks.

11 CHAIR MOULTON-PATTERSON: Thank you very much.

12 MS. JONES: Any questions for Don?

13 Dan.

14 MR. AVERA: Good afternoon, Madam Chair and
15 Members of the Board. My name is Dan Avera with San
16 Bernardino County Environmental Health, LEA.

17 As far as the question regarding permits and
18 conditions, there are very few permits that environmental
19 health programs issue that are discretionary in nature
20 and have conditions attached to those permits to operate.

21 As far as the enforcement is concerned, we do
22 have a tiered enforcement process and most of our
23 environmental health programs, depending on the violation
24 and the threat to public health and safety of whether or
25 not a time frame can be given to come into compliance or

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1 immediate cease and desist and/or closure is necessary.

2 So it's really a tiered enforcement approach to protect
3 public health and safety.

4 As far as the questions that Mark asked us to
5 address, I may give a different perspective on this. As
6 I read the question as far as the original purpose and
7 intent of the PEP was to address those older permits that
8 were written in the late '70s. I think the purpose no
9 longer exists.

10 Most operators of solid waste facilities should
11 not be surprised about changes that occur in the
12 industry. They should understand the marketplace and San
13 Bernardino County -- I should also state right now I'm
14 giving the views of San Bernardino County LEA. There may
15 be other LEAs in the state that may disagree with me.

16 In San Bernardino County, we had 20 landfills.
17 In 1990 we have seven operating landfills currently. We
18 have closed landfills, the permits are up to date, the
19 terms and conditions of the permits are clear to the
20 operator. If there are significant changes to the
21 operation of the landfill, they should not be surprised.
22 So the original purpose and intent of the PEP I believe
23 has changed significantly.

24 Do we need flexibility as LEAs and operators of
25 solid waste facilities? Yes. There needs to be

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1 flexibility in how the waste industry operates, but there
2 should not be surprises. With closed facilities, they're
3 planned, people know about it, and there should be a
4 planning process in place.

5 As far as the statute is concerned, Section
6 44004, the way I interpret it, no operator of a solid
7 waste facility shall make any significance change in the
8 design or operation of the solid waste facility not
9 authorized by existing permit. Now, the key in my
10 opinion is significant change and how we define that.
11 The LEAs over the years have had numerous discussions
12 regarding significant change. In my opinion the public
13 health and safety is a priority. The environmental
14 impact is a priority. If there are no impacts to the
15 environment and the notice of exemption can be filed or a
16 Negative Declaration can be determined, then there is no
17 significant change.

18 I believe that our permits that have been
19 written in the past, and some may continue to be written,
20 that have limitations that are not consistent with the
21 CEQA analysis. Solid Waste Facilities Permits should not
22 be written to be more limiting than the CEQA documents.
23 They should be consistent with the CEQA documents and
24 should also be consistent with any land use permits and
25 conditions.

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1 BOARD MEMBER ROBERTI: Let me -- why is that the
2 case? Why do you feel that's the case or is that the
3 case?

4 MR. AVERA: Well, I don't believe it is the
5 case. I think there have been Solid Waste Facility
6 Permits that have had terms and conditions that are more
7 restrictive than the CEQA documents.

8 BOARD MEMBER ROBERTI: Why do you say that that
9 shouldn't?

10 MR. AVERA: Because I believe the process and
11 the public participation for CEQA is the whole CEQA
12 process is to have a public participation, the input from
13 the regulatory agencies to look at the project
14 description and how the facility is proposed to operate.
15 Those comments and the potential impacts, the significant
16 or potential impacts need to be addressed. If there's
17 mitigation measures that need to be identified and
18 implemented through their mitigation monitoring program,
19 all of those are limiting factors for how the facility is
20 going to operate.

21 BOARD MEMBER ROBERTI: Within the CEQA document,
22 not within the permit.

23 MR. AVERA: Yes, and the permit, the Solid Waste
24 Facility Permit, should be consistent with the CEQA
25 document.

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1 BOARD MEMBER ROBERTI: You said it should not be
2 more limiting. Maybe staff can help as well. Are there
3 any considerations -- well, what are the considerations
4 in the Solid Waste Facility Permit other than normally
5 placed in a Solid Waste Facility Permit that might be
6 other than identified in the CEQA document?

7 MR. DE BIE: I think Dan is referring to
8 situations where you may have had a CEQA document project
9 description that describes a project at a certain
10 tonnage, and then when it comes around for the permit to
11 be written something less than that is actually included
12 in the permit.

13 And it's a choice that's made in some way either
14 with the operator or the LEA, one or the other. It's not
15 necessarily based on trying to do something to prevent an
16 impact. It's not trying to reduce that. That would be
17 addressed in the CEQA document. I think Dan's
18 observation is that --

19 BOARD MEMBER ROBERTI: I'm still trying to
20 understand. What's the reason for the digression?

21 MR. DE BIE: Maybe Dan can help. Typically
22 Board staff advice to the LEA is make sure that they are
23 consistent. Certainly not write a permit that's greater
24 than the project in CEQA. Make it equal to, but they
25 have the option to make it less than and I'll ask Dan to

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1 maybe indicate why they might want to --

2 BOARD MEMBER ROBERTI: So the permitting
3 authority, whether it's the local permitting authority or
4 us to be the local permitting authority, has the ability
5 to make the requirements that are more stringent than
6 CEQA.

7 MR. DE BIE: Yeah. I think they can exercise
8 that discretion.

9 BOARD MEMBER ROBERTI: You're making a policy
10 statement and that shouldn't be the case.

11 MR. AVERA: Yes. I believing the Solid Waste
12 Facility Permit, the terms and conditions should be equal
13 to, consistent with the CEQA document. A simple example
14 may be that the CEQA document talks about operation, how
15 many days. Well, they say they can operate 365 days a
16 year, but some of the permits that you have acted on say
17 they're open Monday through Saturday, they close on
18 Sunday and they're closed on holidays, but the CEQA
19 document doesn't address that.

20 BOARD MEMBER ROBERTI: Doesn't -- I'm thinking
21 out loud now. Doesn't CEQA address basic environmental
22 concerns? The permitting document being more of a
23 planning document takes into consideration -- I don't
24 want to use the word political impact but convenience,
25 things that may not be specifically environmental but are

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1 still things that any local agency may be concerned about
2 as far as the health, comfort, welfare of their
3 constituency. Am I --

4 MR. DE BIE: I agree. The CEQA document should
5 be used along with several other things in determining
6 what the term and condition should be in that permit.

7 For example, with the Lionudakis permit, which I
8 know you're well aware of, the CEQA document expressed
9 tonnage levels, volume levels in there, but because of
10 the concerns among the neighbors and the Board Members
11 themselves, that permit was crafted to allow some check
12 and balance and ramping up of the tonnages. So that's an
13 example of where other non-environmental concerns that
14 weren't covered in the CEQA document. Certainly
15 environmental concerns to the neighbors and to the Board
16 were used to craft conditions that were more limiting
17 than the CEQA document.

18 BOARD MEMBER JONES: Can I ask a question? To
19 put this in a perspective, Dan, if I'm an operator and I
20 go through CEQA and I say I want a transfer station to --
21 it's built to take 2500 tons a day and 600 cars a day and
22 I go through CEQA but my wastestream at the time is 500
23 tons a day, so I ask for a permit for 750, 800 tons a
24 day, so many cars. Are you saying it's not a significant
25 change for me to bump that up in a revision to what CEQA,

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1 which was voted on by the Planning Commission, local
2 Board of Supervisors, City Council approved, that I want
3 to ramp that up as conditions change? Is that getting to
4 the heart of what you're talking about with significant
5 change?

6 MR. AVERA: That's an excellent example of it
7 being analyzed through CEQA, the local land use decision
8 being made on 2500 tons a day, and then the permit was
9 written for something less than that. Then when they
10 come forward in two years, something happens and there's
11 an increase, why go through a year process of an
12 application, a review process, coming up here when
13 everything has been already approved at the local level
14 of up to 2500 tons per day? It's not a significant
15 change. It's already been addressed at CEQA and at the
16 local level.

17 BOARD MEMBER JONES: The other option -- if that
18 option is not available, then the other option is to
19 permit everything at 2500 tons a day, 5,000 tons a day,
20 whatever the CEQA document agreed to.

21 MR. WHITE: And most local governments are
22 allowed to do that. They want to give you a permit to
23 give you a little bit of room for growth but aren't
24 willing to open it up to the entire amount that was in
25 the CEQA documents. I think this is a situation that is

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1 more common than not.

2 BOARD MEMBER JONES: Exactly.

3 MR. WHITE: You're going to get your CEQA
4 document for 2500 tons. You may be operating at 500.
5 They're not going to give you a permit for 2500 tons.

6 BOARD MEMBER JONES: For a couple of reasons.
7 They don't want to see you bringing in that material from
8 jurisdictions outside of there.

9 MR. WHITE: A whole variety of reasons.

10 BOARD MEMBER JONES: They want to be able to
11 condition it when it comes down, but is it a significant
12 change? If CEQA already looked at it and looked at it
13 coming in from these waste sheds, is it a significant
14 change, and that's what your --

15 MR. WHITE: That was the example that I tried to
16 give similar to that. You know, we thought we had a
17 permit for 1500 but there was a disagreement and we went
18 through an intermediary process to give us the room to be
19 able to go back and revise that permit. It was just --
20 you have to do it one way or another. You've got to
21 provide some flexibility. Either you initially issue a
22 permit all the way up to the maximum amount or give it to
23 a lower amount and you go through a very informal, very
24 simply process for revising it or you provide some
25 flexibility through this notice and order process or a

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1 combination of all three. You've got to provide a way to
2 give flexibility.

3 CHAIR MOULTON-PATTERSON: Mr. Paparian and then
4 Senator Roberti.

5 BOARD MEMBER PAPARIAN: Just to follow up on
6 that, I don't think necessarily that CEQA covers
7 everything in the world with respect to these facilities.
8 It does cover quite a bit, but I think there are factors
9 that need to be taken into account that aren't
10 necessarily determined in the CEQA document. I don't
11 know if this is the case or not, but it may be hours of
12 operation is not covered in all the CEQA documentation.
13 Hours of operation may or may not be an environmental
14 impact, yet it may be an impact on the community and
15 maybe needs to be dealt with in the permit process apart
16 from CEQA.

17 BOARD MEMBER JONES: But I think that -- every
18 permit that I've ever seen, as part of the Conditional
19 Use Permit or CEQA you've had to identify when you're
20 going to operate because they need to know when the
21 traffic is going to be going down the streets, so it's
22 part of the traffic mitigation as to when you're going to
23 be able to accept waste. I think -- isn't hours of
24 operation a normal thing? And that's an example, but --

25 BOARD MEMBER PAPARIAN: But there may be a

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1 community desire to be more restrictive than even what
2 the environment -- you may mitigate the environmental
3 impact of all those trucks going in and out of the
4 facility, yet the community for some reason they have
5 other needs that aren't addressed in the CEQA
6 documentation.

7 BOARD MEMBER JONES: Okay. But if the CEQA
8 documentation went forward and went through the local
9 process and the hours of operation and the amount of
10 trucks and all that, the outer limits -- because usually
11 they're talked about as here's what CEQA, here's what the
12 evaluation was, and this facility permit is going to be
13 somewhat less or right to the max or whatever. There's
14 usually a correlation between the two. And when it is
15 something considerably less than what CEQA had taken into
16 account for the environmental impacts, it's usually noted
17 that CEQA was done for a lot more than this but this is
18 what the conditions are that exist today or what we're
19 prepared to approve.

20 CHAIR MOULTON-PATTERSON: Ms. Tobias wanted to
21 answer the question and then Senator Roberti.

22 MS. TOBIAS: I think I can help a little bit on
23 this, and that is that I think first of all it's
24 important to realize -- to remember that we have the two
25 tracks moving at the time, there's a CEQA track and a

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1 permitting track. I think it's important to keep those
2 two separate because the CEQA document is what the
3 project applicant has proposed.

4 So they're able to propose whatever number or
5 whatever project they would like to have analyzed in the
6 process. They use their best abilities to estimate what
7 kind of tonnage limits they're going to be dealing with
8 or hours of operation or whatever, and that's the project
9 analyzed in the CEQA document. So that can be whatever
10 they think they're going to need or use or get through
11 the process or whatever, and that's how CEQA works is
12 somebody puts forward a project description and then the
13 document analyzes that.

14 When you shift over to the permit side of that
15 track, that's where you start to get into some of the
16 restrictions either in the CUP, the Conditional Use
17 Permit process, or the solid waste facility process or
18 whatever permits you're getting on that. That will --
19 that's where the community decision makers, whomever can
20 start to shape what was contained in that CEQA document.
21 The CEQA document may have mitigation measures, it may
22 have other alternatives but the permit is what really
23 takes that and puts that into implementation.

24 I think one of the things that was perhaps what
25 Mr. Paparian was trying to get at is that even if the

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1 document does analyze something that -- let's -- whatever
2 number you want to use, 300 tons or whatever, and the
3 permit is for something less than that, what still needs
4 to be analyzed as you move up to that maximum tonnage is
5 whether there's any change in surrounding circumstances
6 or changes in other things that are going on, either
7 what's happening with other types of waste in the
8 community or whether the area around that project has
9 changed.

10 I do think that there's probably a way in CEQA
11 to try to deal with some of that, for instance -- and
12 maybe it's a little bit easier if you have shopping
13 centers and things like that that have traffic impacts,
14 but to a certain extent you can allow for increases with
15 other types of projects by saying we will allow up to so
16 many trips through this intersection, and I think that's
17 something that we could try to work with on solid waste
18 facilities. If there's no changes in the surrounding
19 circumstances up to a certain number of trips or whatever
20 the impacts are, you could probably still do that. If
21 you can't do that or you haven't done that in your CEQA
22 document, then you really can't get by without looking at
23 whether there's been changes in the surrounding
24 circumstances when you come in to move up to those higher
25 limits. I hope that helps.

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1 CHAIR MOULTON-PATTERSON: Thank you.

2 Senator Roberti.

3 BOARD MEMBER ROBERTI: A couple of things,
4 excellent points Mr. Paparian and Ms. Tobias have already
5 raised.

6 Besides a change in circumstances as to why we
7 should look at other matters when we're talking about a
8 permit change, I would venture to say we should talk
9 about a change in policy. In 1987 when what we call the
10 PEP regulations, policy, whatever took place, we didn't
11 even have, to the best of my knowledge, a diversion
12 policy. Now we are measuring, relatively successfully,
13 diversion, waste generation, all these things that were
14 only conceptual at that time.

15 Taking that into consideration, the presumption
16 that landfills have to be accelerated and that all the
17 other waste things that we do have to be advantaged
18 simply because we weren't getting rid of our trash to the
19 extent that we are in 2000 -- or rather we weren't
20 getting rid of it, we were redirecting it -- I would
21 venture to say isn't the case anymore. All these things
22 we've been doing the last 13 years have hopefully been
23 moving us to the day when we will have more restrictive
24 landfill policies and more restrictive trash disposal
25 policies.

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1 If that's not the case, why do we have a Board?
2 Hence, the presumption that we have been engaging in, and
3 that is that we have to allow these variances, whatever
4 we want to call them, to take place even before the Board
5 hears them and then we decide whether we want to continue
6 them I think should be reversed simply based on the
7 success, moderate success, that we have had in measuring
8 our waste and diverting it. If it's business as usual
9 and things haven't changed since 1987, this Board
10 shouldn't be in existence, but I don't submit that that's
11 the case.

12 So the policy, which if I were here in 1987,
13 which probably was wise and I probably would have voted
14 for, I think should be reversed now, and that is the time
15 has come for us to look at other alternatives, other
16 options because there has been a policy change based on
17 the work of the Board and we shouldn't presume that the
18 landfill wins or the variance wins or the amendment to
19 that wins as we do now, but rather we should do the
20 opposite and they have to prove that case to the Board.
21 It's 13 years and there have been successes and there's
22 been a lot of water under the bridge.

23 So my own submission to you, Madam Chair, is
24 that I hope staff can come back with some ideas on how we
25 can revamp this presumption that the variance prevails.

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1 It should be just the other way around based on what
2 we've been doing. I guess that's -- I guess that's the
3 changes in policy that I'd like to talk about.

4 Another point, which is I think is important
5 too, why there's a divergence between CEQA and
6 permitting. And I don't agree with the speaker. I
7 appreciate his point but I don't think I agree with the
8 policy you're trying to get at, and that is a planning
9 document or permitting document -- they're somewhat the
10 same I would think -- goes to things that aren't strictly
11 environmental.

12 When CEQA was first passed, which I would say is
13 the most significant environmental legislation that the
14 legislature passed that I can remember, 939 being the
15 second most significant, CEQA is number one -- when it
16 was passed there was almost no environmental
17 considerations. So it was necessary, extremely
18 necessary, but it's not the only consideration.
19 Anybody -- and our two members here who have sat on local
20 government certainly know this on first-hand experience.
21 There are other things to take into consideration, just
22 the comfort and the convenience of the people who live in
23 the city is an important consideration.

24 Why a permit might be more restrictive than the
25 CEQA document is simply because a local governing board

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1 recognizes that it's not only the very important
2 environmental considerations that are going to dictate
3 their decisions. There's a whole group of people out
4 there who just don't want to look at big ugly trucks
5 coming into a landfill. Whether they're right, whether
6 they're wrong, this is a policy decision local government
7 makes just on comfort, which is the reason why people get
8 elected or unelected to Councils and Boards of
9 Supervisors.

10 That's why we have planning and permitting
11 documents and we shouldn't take it upon ourselves to
12 effectively eliminate that and say the only thing we're
13 going to allow for is environmental considerations and
14 you don't have a right to be more restrictive in your
15 permitting because all we're looking at is environment.
16 I don't think the most avid environmentalist would agree
17 to that because there are other factors as well. And the
18 fact we didn't look at the environmental at all, say 20
19 years ago, doesn't mean you don't look at other
20 considerations when you have a permitting document.

21 So I think those two points are important, but I
22 really and truly want to stress that I hope this Board --
23 if we aren't proud of what we have done, nobody will be.
24 If we don't recognize that this Board has made
25 significant motion in diverting waste, nobody is going to

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1 recognize that. And therefore, our policy shouldn't
2 reflect that we're still at ground zero and we have to
3 presume that every landfill, every transfer station has
4 to be given the presumption of an okay.

5 BOARD MEMBER JONES: Madam Chair.

6 CHAIR MOULTON-PATTERSON: Thank you, Senator
7 Roberti.

8 Mr. Jones.

9 BOARD MEMBER JONES: The -- I think one of the
10 things the Senator brings up gives me pause because I
11 want to know that -- you know, I think it's pretty clear
12 that what we're doing in the state makes sense when you
13 go from 100,000 more tons in the landfills obviously in
14 this environmental -- I mean in this economic situation
15 we find ourselves in, that means 4 million tons went to
16 alternatives. If we say that the CEQA document has other
17 issues that are surrounding it, that need to be taken
18 care of by local decision makers, which I happen to agree
19 with, and I think we've taken this example and distorted
20 it, me, him, them, everybody, just about as well as we
21 could do, the one thing you have to be really careful
22 about is there are still regional shortages for landfill
23 space.

24 So if you want a local government to come to us
25 because of changes in a region where material is going to

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1 exceed what was a permitted landfill and where now they
2 have the opportunity to write notice and orders that will
3 control it, and if you want to take that away from us,
4 then if they eat up all their landfill capacity because
5 of some other issue and they have no landfill or they
6 can't deal with more than half or three-quarters of the
7 wastestream, then are we prepared to pay the differences
8 in moving that material somewhere else? Or are we
9 prepared to because a local jurisdiction has to guarantee
10 15 years of capacity and a disaster or something comes
11 along that takes out a lot of that capacity and there is
12 no option for them because of this policy or proposed new
13 discussion on policy, what are we going to do with the
14 garbage? What are we going to do -- I mean do they come
15 to this Board as a local city or and say okay. You've
16 tied our hands where we can't do this stuff locally.
17 Where you want us to do it and who do we send the bill
18 to?

19 I think that's part of why a notice and order --
20 and I'm disturbed that the difference between a cease and
21 desist order and a notice and order need to be understood
22 because a cease and desist order says there's an impact
23 to the health and safety, there's an impact to the
24 environment and you are going to stop what you are doing
25 immediately, right now. Under AB 59 the operators can

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1 appeal that, the citizens can appeal it, anybody can
2 appeal it, but it's a process that stops that damage.
3 Under a notice and order, that gives them the
4 opportunity to deal with changing conditions in a region
5 but it lets the local decision makers deal with it and to
6 take that away from them I don't think promotes
7 landfills. I don't think that promotes landfills as much
8 as it says we're going to give you the opportunity to
9 deal with something in this waste shed.

10 BOARD MEMBER ROBERTI: Madam Chair.

11 CHAIR MOULTON-PATTERSON: Mr. Eaton.

12 BOARD MEMBER EATON: Let Senator Roberti go.

13 BOARD MEMBER ROBERTI: I want to respond to
14 Mr. Jones.

15 BOARD MEMBER EATON: Absolutely.

16 BOARD MEMBER ROBERTI: And I won't talk too
17 long. I'm not against anything you said. All I am
18 saying is that the presumption that the notice and order
19 takes place -- I guess that's the word of art -- instead
20 of --

21 BOARD MEMBER JONES: Cease and desist.

22 BOARD MEMBER ROBERTI: -- cease and desist
23 should no longer exist and it's a decision we should
24 make. Maybe 50, 60, 70 percent of the time we're going
25 to go your way.

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1 BOARD MEMBER JONES: It wouldn't be my way. It
2 would be their way.

3 BOARD MEMBER ROBERTI: The way we're
4 discussing -- but what I'm saying is that it's almost a
5 hundred percent of the time when in effect all we are
6 doing is listening to something that's already taken
7 place. And to use words I've used, maybe they're a
8 little too strong, we rubber stamp the fate accompli.

9 BOARD MEMBER JONES: But under this scenario
10 that we have now, the LEA is inspecting these facilities
11 monthly. It would make sense for people to see what an
12 LEA does when they go out on an inspection. They check
13 the records, they look at the daily tonnage deliveries,
14 they make sure the facility is operating within the
15 standards and conditions that are set in the permit. At
16 some point they understand that the trend is changing and
17 they probably regionally know what is causing the change.

18 And believe me, if it's somebody dropping the
19 fee at the tipping fee just to get more money, I don't
20 have no problem with issuing a cease and desist and it
21 should actually be the duty of the LEA to make that
22 determination, but if it is because a facility closed and
23 more -- and two more housing tracts went in and they're
24 generating more waste in that waste shed, you heard
25 Rebecca say that it took two years to do a landfill

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1 revision.

2 So do we preclude people for two years from
3 dealing with the solid waste issues that are part of that
4 area or do we allow an LEA, who understands it as it's
5 going along day by day, that it's starting to increase,
6 to issue notice and orders -- do they notify when you
7 they issue a notice and order? I think they do.

8 MR. DE BIE: Yes. They're required to share
9 notice and orders with board staff, as well as other
10 regulatory agencies, prior to issuing the notice and
11 order.

12 BOARD MEMBER JONES: Prior to issuing. So maybe
13 there's a mechanism.

14 MR. DE BIE: Board staff will review and make
15 comment on those.

16 BOARD MEMBER JONES: Maybe there's a mechanism
17 where we get a report here so we're aware of what's going
18 on in these different jurisdictions. But I think if
19 knowing an LEA -- and if an LEA doesn't have a clue -- no
20 offense, Justin. But if an LEA doesn't have a clue as to
21 what's going on in the region or that a facility is
22 exceeding its permitted capacity and then all of a sudden
23 they're going to issue a notice and order, then we need
24 to be doing our job in seeing if that LEA is in fact
25 qualified to represent us. We don't do that very often

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1 where we really look at the LEAs -- well, that's not
2 true.

3 Staff does a great job of evaluating the LEAs,
4 and we have had one that we de-certified or minimally
5 took away a bunch of control to try to get them in, and
6 there's going to be others that are sure to come forward.
7 That to me would seem like the way that gets you -- I
8 would hope it would get us the control that we need so we
9 know what's going on, so we're not a rubber stamp, but if
10 we're two years away and we say absolutely you can't
11 bring that in, then where is it going to go if there's

12 nowhere else for it to go? That's what I think we have
13 on the policy to weigh anyway, at least weigh it.

14 CHAIR MOULTON-PATTERSON: Mr. Eaton.

15 BOARD MEMBER EATON: I have one point that I was
16 always unclear of and perhaps maybe you can help me out.
17 The factors, hardship and those, do those pertain both to
18 a cease and desist and a notice and order? Do you
19 consider those factors for either of those?

20 MR. AVERA: The existing policy, those hardships
21 and those factors are considered in the notice and order.
22 My definition of a cease and desist, and maybe people
23 view them differently, when I say a cease and desist,
24 that means I issued it to you now and it means now, stop
25 today, right now. It doesn't mean cease and desist nine

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1 months from now, it means now. So a notice and order is
2 issued to describe those conditions and those hardships
3 and to explain what's going on and to allow the operator
4 to go through the process of revising and changing the
5 permit, which can take nine months, 12 months easy for
6 simple things.

7 BOARD MEMBER EATON: I'd like to follow that up
8 with a question then. As long as we're talking about
9 remaining modification or revocation policy, existing
10 policy, do you believe that those five factors are equal
11 in weight? You have five factors here. You have
12 hardship on the operator. You have cost to the public
13 benefit or public health and environment where it's
14 thoroughly and considered for each alternative the
15 facility design and operation which caused the permit
16 violation posed a threat to the environment or the public
17 health and safety. Do you consider that, the hardship
18 and the threat to the public health and safety, are of
19 equal weight when you make your determination?

20 MR. AVERA: From my personal perspective --

21 BOARD MEMBER EATON: That's what I'm trying to
22 find out, what is the LEA practice.

23 MR. AVERA: Public health and environment is a
24 priority.

25 BOARD MEMBER EATON: So in that situation do you

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1 issue a cease and desist or a notice and order?

2 MR. AVERA: If there's an immediate threat to
3 public health and safety, I believe the cease and desist
4 would be the appropriate enforcement action.

5 BOARD MEMBER EATON: I'm just trying to find out
6 what the LEA practice is because those are factors and
7 sometimes they get used interchangeably. What I'm look
8 at is should they remain equally weighted or do you
9 equally weight them or do you weight them heavily in
10 terms of how you take your enforcement action whether it
11 should be -- what the time frame is. Isn't that what it
12 gives, it gives you a certain time frame as a guidance.
13 So should those be weighted?

14 MR. DE BIE: You're correct, Member Eaton. The
15 intent of the policy ten years ago was to use those
16 criteria to determine the time frames, and if the LEA
17 using that criteria determines that these -- the criteria
18 points them in the direction that there's a big problem
19 here that needs to be dealt with immediately, that may
20 lead them to a cease and desist order to stop that
21 activity that's creating that problem. But then on the
22 other hand, if they utilize the criteria and it leads
23 them well, there isn't that much of a problem here, we
24 can extend it out.

25 In terms of the weight, I know that all of these

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1 criteria were debated thoroughly with the Board ten years
2 ago and that weight was a part of that discussion, but I
3 think today it's sort of -- I personally would like to
4 see the Board's take on are these the five criteria,
5 should they be weighted, are there additional criteria
6 that should be looked at?

7 I think Senator Roberti is referring to maybe
8 situations here that aren't addressed in the criteria.
9 Certainly staff I think are open to that aspect of the
10 policy and maybe bringing that back to the Board as one
11 of the options that come out of the workshop. I think
12 that might be where we focus some energy on is those
13 criteria and do they make sense and how should they be
14 dealt with.

15 MS. NG: Madam Chair.

16 CHAIR MOULTON-PATTERSON: Yes.

17 MS. NG: In the PRC, Section 45005, it talks
18 about if a condition of hazard, pollution or nuisance
19 exists or in terms of public health and safety that a
20 cease and desist should be issued. So I think of those
21 five conditions if something threatens the health and
22 environment or safety, health and environment, a cease
23 and desist is in order and that condition, that criteria
24 would weigh more heavily than some of the others.

25 BOARD MEMBER EATON: I'm trying to figure out

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1 what the weighting system is in practice as opposed to
2 what's in the book.

3 CHAIR MOULTON-PATTERSON: Thank you.
4 Senator Roberti.

5 BOARD MEMBER ROBERTI: If I could maybe propose,
6 based on all the comments that the Members of the Board
7 have made, that at our next workshop meeting in August
8 the staff could return to us and give us various options
9 to discuss for purposes of policy on cease and desist --
10 or on PEP. I guess that's about all I have to say, and
11 the related cease and desist and requirements and notice
12 and order relative to PEP so we might be able to change
13 our policy, if the Board chooses to do that, or maintain
14 our policy, if the Board chooses to do that.

15 I would like to offer that as a motion or
16 recommendation.

17 CHAIR MOULTON-PATTERSON: Okay. Thank you. So
18 could our staff please return with some policy options
19 concerning cease and desist regulations?

20 BOARD MEMBER ROBERTI: PEP issues. The whole
21 PEP issues.

22 CHAIR MOULTON-PATTERSON: PEP issues and notice
23 and orders.

24 MS. NAUMAN: We will bring that to you in the
25 context of a workshop. It would not be an item for

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1 consideration but just a review of some options that
2 we'll work on between now and then and we can have
3 further discussion.

4 CHAIR MOULTON-PATTERSON: Thank you, Senator
5 Roberti.

6 Mr. Medina.

7 BOARD MEMBER MEDINA: Along with that, Madam
8 Chair, I know that between 1990 and 1999 there were
9 approximately 60 operators issued a notice and order. I
10 wonder if we could have some examples along with that
11 with cease and desist orders as well as the notice and
12 orders as well.

13 MR. GAMBELIN: Madam Chair.

14 CHAIR MOULTON-PATTERSON: Yes.

15 MR. GAMBELIN: If I could jump in with a little
16 bit of operators's perspective in this and when I was
17 speaking at the podium I was really approaching it from
18 not only a operator who owns and operates disposal
19 facilities, transfer stations and landfills, but also one
20 that is also extremely involved in recycling activities
21 not only for your typical curbside materials and
22 processing of that, but Norcal also owns and operates
23 probably the most progressive composting facility in the
24 state now out at the B and J Landfill site.

25 We would certainly hope and support that the

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1 Permit Enforcement Policy is extended and continues to be
2 extended not only to landfills, which is what the
3 discussions seem to focus around, but also those
4 recycling facilities that do hold some tiered permit,
5 whether it be standardized, whether it be full, whether
6 it be registration level, but that the PEP is also
7 continued to be extended to those because just as it's
8 very important as Mr. Jones pointed out or Board Member
9 Jones pointed out to continue to be able to dispose of
10 material rather than it piling up on the streets
11 somewhere is just as important, as Senator Roberti
12 pointed out, to continue those diversion programs that
13 have developed including markets, supply to markets, a
14 compost facility, being able to continue to supply a
15 market even though there's a permit issue that needs to
16 be addressed, and rather than shutting down that facility
17 to continue that supply, to continue to take that green
18 waste that has been -- the green waste from say a program
19 that is really part of the infrastructure of the
20 municipalities' solid waste services now to continue to
21 receive that, to process it, to supply a market and
22 continue to develop those diversion markets that have
23 become so important.

24 Again from that perspective, I would hope that
25 it continues to be applied to all facilities that have

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1 some sort of permit from the LEA and Waste Board.

2 MR. WHITE: I would briefly echo that, too.

3 Most of the examples that I was thinking of coming to
4 this workshop were of facilities that were involved in
5 processing solid waste for purposes of recycling and
6 diversion. I really wasn't thinking so much of the
7 landfills, although I'm sure they exist and have from
8 time to time.

9 This is a policy that helps promote additional
10 options and processes for diverting solid waste as well.
11 So it's not just simply disposal we're talking about,
12 we're talking about processing and diverting as well.

13 CHAIR MOULTON-PATTERSON: Thank you for bringing
14 that up. Ms. Nauman, did you get Mr. Medina's addition?

15 MS. NAUMAN: Yes, I did.

16 BOARD MEMBER JONES: Can I just ask two
17 questions? I love the idea we're going to have the
18 discussion on the 11th and then we'll -- they're going to
19 frame it on the 11th with different options and then
20 we'll have another meeting later to determine it?

21 CHAIR MOULTON-PATTERSON: It will just be
22 presented at the workshop; right?

23 BOARD MEMBER JONES: It's not an action item.

24 CHAIR MOULTON-PATTERSON: No.

25 BOARD MEMBER JONES: I think this is good. I'm

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1 enjoying this debate. I agree with a lot of what you're
2 saying, but I think there's merit on both sides of this
3 argument.

4 On Mr. Medina's request, I think it's
5 interesting. He's asked what are these notice and orders
6 on. I'm just wondering how many are a result of
7 facilities closing because of Subtitle D that put huge
8 burdens on other facilities to be able to take that up or
9 put in new recycling programs. It would be interesting
10 to see what those 60 were issued for. I know what I
11 needed a couple for.

12 CHAIR MOULTON-PATTERSON: Ms. Nauman.

13 MS. NAUMAN: Thank you, Madam Chair. At this
14 point in the interest of time we'd like to conclude this
15 segment and again thank the panelists for their
16 insightful comments.

17 If you can bear with us for about 20 more
18 minutes, and the court reporter has assured me that she
19 can bear with us as well, we'll move through one
20 additional segment and that is the application
21 requirement and LEA process.

22 CHAIR MOULTON-PATTERSON: I would just like to
23 say thank you to the panel. It was very, very good.
24 Thank you.

25 MS. NAUMAN: And Jon Whitehill will present this

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1 and he promises me it will take 15 to 20 minutes and
2 we'll then take a short break and come back and do the
3 discussion on conformance.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 MR. WHITEHILL: Thank you. Good afternoon,
6 Board Members. I'm Jon Whitehill of the Board's
7 Permitting and Inspection Branch, and I'll be going over
8 the general mechanics of the permit application process.

9 As Mark mentioned earlier, there are several
10 events that can trigger a permit application process. It
11 could be the permit review reports as conducted by the
12 LEA, it could be a requested change on the part of the
13 operator, it could be an enforcement action taken by the
14 LEA, or it might just be a new site, a new facility
15 that's coming forward. Regardless of which of those
16 steps brings us to the permit process, the actual process
17 is going to be the same regardless of which triggering
18 got us there.

19 The process for full permits is contained in
20 Title 27 and the application process is outlined in some
21 detail there. For standardized permits, the permit
22 process is outlined in Title 14. For both full and
23 standardized permits, there's always an application form
24 and attached to the documents, and quite often the
25 regulations refer to that as the application package.

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1 That would be the actual form and those items included
2 with it.

3 The list of items that are required to be
4 included in the permit package is often referred to as
5 the laundry list by Board staff. So if you hear that
6 term, that's usually the list of items in an application
7 package.

8 For a full permit, the operator is required to
9 not only submit the application form to the LEA, they're
10 required to forward a copy to the Regional Water Quality
11 Control Board so that they can begin their concurrent
12 application process. If it's a disposal site, they have
13 to give a copy of the entire package to the Water Board.

14 The EA is also authorized to charge a fee for
15 processing the permit. The application needs to be in
16 adequate detail, not only so that the LEA can determine
17 that the facility will operate in compliance with state
18 minimum standards, but they also need to be able to
19 evaluate environmental affects in general. The entire
20 application package has to be certified by the operator
21 as being true and accurate at the time that they submit
22 it.

23 Now, the actual laundry list of required
24 information required to accompany the application for
25 either a new or revised full permit, regardless of how we

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1 got there, consists of first of all the application form
2 which contains key information on the site parameters,
3 key information on who the operator is, where the site is
4 located, how big it might be.

5 The package is also required to contain an
6 operating plan which is referred to as the Report of
7 Facility Information in the regulations. You'll see
8 during the permit process different kinds of Reports of
9 Facility Information. Sometimes for a landfill it will
10 be called the RDSI, which is a Report of Disposal Site
11 Information. For transfer stations, it's a Report of
12 Station Information. For compost facilities, it's a
13 Report of Compost Site information.

14 Also in the application package the operator is
15 required to submit CEQA information, which is evidence of
16 compliance with the California Environmental Quality Act.

17 That usually consists of either a Negative Declaration or
18 an EIR or because state law allows concurrent processing
19 of both a permit and a CEQA document, the operator is
20 also allowed to submit a status report on their progress
21 towards achieving CEQA compliance.

22 The package is also required to contain local
23 land use or local Conditional Use Permits that we
24 discussed a little bit earlier. The package is required
25 to contain conformance finding information, which is

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1 evidence that the proposed facility or the changes in the
2 facility are identified in the County's Integrated Waste
3 Management Plan, and we'll be talking about that later
4 this afternoon.

5 If the permit is for a disposal site, the
6 package needs to contain preliminary closure and
7 post-closure maintenance plans. In addition, there needs
8 to be a financial assurance mechanism that shows that the
9 site will have enough money to be able to close the site
10 and implement the post-closure maintenance plan.

11 Now, the laundry list for a standardized permit
12 is very similar to a full permit. However, the operator
13 is not required to submit a Conditional Use Permit, and
14 because there's no landfills in the standardized tier,
15 there's generally no closure plan or financial assurance
16 mechanism required.

17 Once the LEA receives the operator's application
18 package, the LEA is allowed a 30-day review period.
19 Before their 30 days are up, the LEA will either accept
20 the application for filing, meaning that the LEA has
21 reviewed the entire package of information that I just
22 described and they have determined that it's complete and
23 correct; or at the end of the 30 days they can reject the
24 application as incomplete, meaning that one or more of
25 the parts of the package are missing or are inaccurate or

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1 possibly inconsistent with other parts.

2 The LEA also may accept the application package
3 as incomplete. Sometimes the operator would like the
4 review of some parts of the application package just to
5 start while others are being prepared. This allows
6 concurrent review of different parts to take place.
7 However, the package must be deemed complete within 180
8 days.

9 Now, once the operator has submitted the
10 application, the LEA has reviewed it and determined that
11 it's complete, then the LEA has 55 days to write and
12 submit a proposed permit for Board consideration. Again,
13 Title 27 outlines and in some detail a laundry list of
14 info to be submitted by the LEA to the Board. The
15 information that accompanies the proposed permit -- first
16 of all, there's the proposed permit, which contains terms
17 and conditions as deemed appropriate by the LEA.
18 However, the LEA is not allowed to write any terms and
19 conditions that only address air or water quality
20 concerns. Assembly Bill 1220 that was mentioned earlier
21 requires us to eliminate as much overlap and duplication
22 as we can between Water Boards, Air Boards and LEAs.

23 The proposed permit also needs to be accompanied
24 by the complete application package as accepted by the
25 LEA. There needs to be certification the LEA reviewed

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1 the entire application package and found it to be
2 complete and correct. There needs to be information on
3 any Water Board enforcement actions that are currently
4 pending. There needs to be copies of any written public
5 comments on the pending application. There needs to be a
6 copy of the most recent five-year permit review report
7 that we talked about earlier. There needs to be a
8 determination that the proposed permit is consistent with
9 and supported by existing CEQA documentation. And again
10 because state law allows concurrent review of proposed
11 permits and CEQA documents, they're also allowed to
12 submit a status report on progress towards completing the
13 CEQA process.

14 Now for a standardized permit again, it's very
15 similar to the process for a full permit. However, again
16 the LEA has 30 days to review the standardized
17 application. However, once they determine that the
18 standardized application is complete, they only have 15
19 days to submit a proposed permit to the Waste Board and
20 in this case the proposed permit would not have any terms
21 and conditions.

22 So that's just a brief summary of the
23 application process from the operator submitting the
24 package, the LEA reviewing it and then writing the permit
25 and making those determinations before they submit the

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1 permit to the Waste Board for their consideration.

2 If you have any questions, I would be glad to
3 answer them or I'll hand it back to Mark.

4 CHAIR MOULTON-PATTERSON: Thank you,
5 Mr. Whitehill.

6 Mr. Paparian has a question.

7 BOARD MEMBER PAPARIAN: On one of your earlier
8 slides you had the list of things that are required in
9 the application and you had conformance with standards in
10 there. I assume those would be the state minimum
11 standards.

12 MR. WHITEHILL: That would be in conformance
13 with any standards adopted by the Board. So in that case
14 it would include not just the state minimum standards but
15 usually refers to those daily operating standards that
16 LEAs evaluate on a monthly basis. It would be other
17 standards such as closure plans, financial assurance, any
18 standards adopted by the Board.

19 BOARD MEMBER PAPARIAN: Do we have some sort of
20 listing of all the standards that have been adopted by
21 the Board?

22 MR. WHITEHILL: The regulations, yes. It's
23 quite extensive.

24 BOARD MEMBER PAPARIAN: How would an LEA know --
25 do they have a checklist of some sort?

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1 MR. DE BIE: We would expect them to run
2 through -- if it's a landfill, to run through all the
3 requirements in Title 27 for a landfill in terms of
4 design and operation. We would expect them to run
5 through the requirements in Title 14. For transfer
6 station processing facilities, compost facilities, to
7 verify whether or not what's being requested in this
8 permit is going to allow the facility to be consistent
9 and in compliance with all those requirements. They
10 would need to match up all of those requirements for that
11 particular facility both in statute and reg and make an
12 assessment and that's done in 30 days.

13 BOARD MEMBER PAPARIAN: How does something
14 become a standard? If this Board takes an action, how
15 would I know that it's a standard as opposed to something
16 else?

17 MS. TOBIAS: I'm not sure standard was a good
18 word to use there in the sense that I think you're
19 thinking of standards as in state minimum standards which
20 means that there's a number set or something. And I
21 think probably a better term might have been
22 requirements.

23 I think what you're getting at is the old 884,
24 does somebody know what they're supposed to be checking
25 out, what they turn in, what they're evaluated on. I do

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1 think that there is basically a list of the things that
2 are reviewed by the Board such as financial assurances
3 and state minimum standards and things that Mark was
4 turning up. I don't know, and probably Mark or Jon does,
5 in terms of whether it's an actual list you could see.

6 I don't think they're talking about anything
7 that's been done by the Board in a separate action, not a
8 separate standard. Does that make sense? Jon, do you
9 have -- is there a list somewhere that basically says all
10 the things that we're going to evaluate when it comes in?

11 MR. WHITEHILL: What I referred to earlier as
12 the laundry list, it would probably be -- tab five of
13 your packet has a list of those general areas.

14 MR. DE BIE: Six. Sorry.

15 MR. WHITEHILL: Six. For full permits they need
16 to evaluate all those areas in both columns of that
17 handout, in other words standards related to the closure
18 plan, standards related to operating and design.

19 BOARD MEMBER PAPARIAN: If this Board were to
20 take an action at a meeting saying that we would like
21 facilities in the future to do X, whatever that might be,
22 that would then be a standard; right?

23 MS. TOBIAS: And as you well know, it would have
24 to be based on some statutory authority so we would have
25 a reference back to something like that but yes, it's

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1 conceivable that there's something that --

2 BOARD MEMBER PAPARIAN: Okay. So there could
3 potentially be standards that are not necessarily
4 directly on this list.

5 MS. TOBIAS: I think that there -- I guess the
6 way I would say it is that if the Board came up with
7 something that we weren't now covering that we have
8 statutory authority to, we could add to it. But I think
9 the list that we've got basically has been adopted in the
10 regulations and it basically lists out regulatory
11 requirements.

12 BOARD MEMBER PAPARIAN: Thank you.

13 BOARD MEMBER JONES: So this is the list right
14 now, today.

15 MS. TOBIAS: Right. Today.

16 CHAIR MOULTON-PATTERSON: Thank you again.

17 BOARD MEMBER EATON: So when the issue of
18 completeness comes up, it's with regard to the second
19 column, correct, that we get? Because obviously
20 delegated authority gives the discretion to the LEA from
21 the first column to the second column.

22 MR. WHITEHILL: That's right. The first column
23 are those items that the operator submits to the LEA.

24 BOARD MEMBER EATON: Right.

25 MR. WHITEHILL: -- at that time they certify it

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1 is complete and correct. The LEA reviews that and at
2 that time, when they accept that application, they are
3 making a determination that it's complete.

4 BOARD MEMBER EATON: And that's the issue that
5 we -- that's the discretion we don't have; is that
6 correct? When the LEA certifies that it is complete, we
7 have no discretion at that point to say that it is not
8 complete.

9 MR. WHITEHILL: I think we'll be covering that
10 issue --

11 BOARD MEMBER EATON: I'm trying to get a road
12 map here. I'm trying to figure where, at what point and
13 what juncture do we have that discussion.

14 MS. NAUMAN: We will delve into that issue in
15 more depth at our August workshop when review the whole
16 process for how the board staff and Board review permits
17 once they're received from the LEA.

18 BOARD MEMBER EATON: So that's the second
19 semester, 101B. I just want to make sure. I don't want
20 to get too far ahead. I got last year's Cliffnotes.

21 (Laughter)

22 MS. NAUMAN: You get extra credit if you do a
23 paper in advance.

24 We have one more segment before the break.

25 MR. DE BIE: Just to -- we are going to start

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1 getting into the nitty-gritty of completeness and
2 correctness and all those items that Jon went through,
3 but just to review some of the problems before we start
4 into that list beginning today and then we'll continue it
5 into August.

6 In terms of complete and correct problems that
7 we've observed is first of all applications are sometimes
8 submitted as incomplete or incorrect as determined by
9 either the applicant or the LEA. As Jon pointed out, the
10 system is in place to allow an incomplete application to
11 be submitted, but then there's time frames associated
12 with getting that to be complete.

13 There's lack of clarity on what is required.
14 When we look at the standards and how they're described,
15 we don't all agree, either Board staff, LEAs or
16 applicants, on what meets that standard, what is
17 allowable, what is correct.

18 There's lack of adequate information to make
19 assessment of the environmental affects and compliance
20 with the standards. So there just isn't information
21 available in either the application or that permit
22 package to really make a determination of whether or not
23 this facility as being proposed in the permit can meet
24 those standards. There's not enough detailed information
25 for someone to make that assessment.

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1 Sometimes there's delays in providing the
2 information, so there's a partial submittal and then it's
3 kind of piecemealed in bit by bit. We see that at the
4 Board level with some of these standardized permits where
5 the time frames for the Board to act are very short. We
6 may get a proposed permit from the LEA and then we may
7 get part of the RFI and then we may get all of the RFI.

8 Well, our time frame starts when we receive not
9 a complete application package but in some regard when we
10 get that proposed permit. So that leads into board staff
11 dealing with an application or a permit package that's
12 not complete.

13 Then we run into the situation where you have
14 the application, the RFI, CEQA documents, as well as
15 Integrated Waste Management Plans, and none of them are
16 speaking the same language. They don't match either
17 because they're comparing apples and oranges or they just
18 have completely different numbers in there. So then that
19 factors into whether or not this is a complete and
20 correct application or package here.

21 The issue that we're going to cover after the
22 break is one of the pieces here that leads to these
23 problems and that is the conformance finding issue that
24 is part of that submittal of the application. So I
25 believe we're going to take a break and then we'll

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1 reconvene and discuss this one piece. We'll discuss the
2 other ones in August.

3 BOARD MEMBER ROBERTI: Madam Chair.

4 CHAIR MOULTON-PATTERSON: Senator Roberti.

5 BOARD MEMBER ROBERTI: Could I do an ex parte?

6 CHAIR MOULTON-PATTERSON: Yes.

7 BOARD MEMBER ROBERTI: I spoke to Yvonne Hunter
8 and Chuck White on PEP requirements.

9 CHAIR MOULTON-PATTERSON: Thank you.

10 MR. DE BIE: Okay. 15-minute break?

11 CHAIR MOULTON-PATTERSON: Yes.

12 MS. JONES: We'll take a break.

13 (Recess taken)

14 MR. SCHIAVO: Good afternoon. Pat Schiavo of
15 the Diversion, Planning and Local Assistance Division and
16 our focus today will be on the planning and the
17 conformance finding process.

18 With enactment of AB 939, local jurisdictions
19 and local governments were required to submit to the
20 Board a number of different planning documents related to
21 integrated waste management activities. Two of these
22 planning documents were program related.

23 The first was a Source Reduction and Recycling
24 Element, and the focus of that document was for
25 jurisdictions to show the Board how they planned on

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1 achieving the 50 percent diversion goal through program
2 implementation activities. The second program document
3 was the Household Hazardous Waste Element, and again it
4 was for local jurisdictions to show the Board what kinds
5 of programs they planned on implementing to deal with
6 that portion of the wastestream. Both of these documents
7 were required to be submitted by all local jurisdictions.

8 The second set of planning documents were
9 facility related, and the first I'll mention is the
10 Countywide Siting Element which was to be completed only
11 by counties and it's to show existing or planned disposal
12 facilities within a county. The second is a Non-Disposal
13 Facility Element which are to show diversion facilities
14 throughout the state. These were to be submitted by all
15 local jurisdictions.

16 Now, the focus today will be primarily on the
17 facility related planning documents and Catherine Cardoza
18 will go ahead and walk you through the Countywide Siting
19 Element and the NDFE documents and their relationship to
20 the conformance finding process, and afterwards we will
21 be conducting another panel discussion.

22 MS. CARDOZA: Good afternoon, Madam Chair and
23 Board Members. The Countywide Siting Element is a
24 planning document prepared by the counties as required by
25 statute. It identifies a county's existing and planned

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1 disposal facility or expansions and also the county's
2 remaining disposal capacity at the time the Siting
3 Element was prepared. If the county has less than 15
4 years remaining disposal capacity, they were to also
5 include a strategy on how they were going to attain that
6 amount.

7 As far as facilities-specific information, they
8 had facility name and owner-operator and permit-specific
9 information including an estimate of the remaining site
10 life based on each facility's remaining disposal capacity
11 and then a remaining disposal capacity amount countywide.
12 Also for each facility they were required to include
13 information on rates of waste disposal including the
14 maximum permitted daily and yearly as well as average
15 daily amounts received, the permitted waste types for
16 each facility, and then for any facility that was planned
17 to be closed within the 15-year planning period what the
18 expected post-closure land use would be.

19 A county can amend their Siting Element at any
20 time including a description of the new facility or an
21 expansion with the information we just covered, and the
22 local task force for the county must meet and prepare
23 comments on the amendment which must be circulated along
24 with the amendment to all the jurisdictions within the
25 county for a 90-day review period, 30 days of which is a

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1 notice in the local newspapers of all the cities of the
2 upcoming hearing for the amendment. Also included in
3 that information that's circulated is CEQA documentation
4 for the amendment, as well as a finding of consistency
5 with the applicable general plan of whichever
6 jurisdiction is hosting the facility in question.

7 Further in the process for amending the Siting
8 Element is there must be a local and adoption of the
9 amendment as well as the CEQA by the county with a
10 resolution, and then local hearings and adoptions of the
11 amendment by the majority of the cities with a majority
12 of the incorporated population with resolutions, or if
13 the cities decide to not take any action within the 90
14 days then the amendment is deemed approved by default.
15 The amendment only needs local adoption before the Board
16 can concur with any corresponding permit.

17 As far as the Non-Disposal Facility Element or
18 NDFE, it's also required by statute, one section
19 specifically for cities, another for counties, and
20 identifies the diversion facilities used by a
21 jurisdiction. The information that's required for an
22 NDFE is type of facility, say a composting facility and
23 its capacity, as well as its anticipated diversion rates,
24 and the participating jurisdictions in that facility and
25 then a location description which could be specific

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1 address or a general description of the area where the
2 facility is located.

3 Jurisdictions can also amend their NDFE at any
4 time by including a description of that new facility or
5 its expansion including the information I just went over.
6 And the local task force again must meet and provide
7 comments. How an NDFE amendment differs from the Siting
8 Element is only a three-day notice is necessary in the
9 local newspaper of the host jurisdiction for that
10 facility, and then they must meet and adopt that
11 amendment by resolution.

12 Also this NDFE differs from the Siting Element
13 in that it is statutorily exempt from CEQA and then the
14 amendment must be approved by the Board --

15 BOARD MEMBER ROBERTI: Madam Chair.

16 CHAIR MOULTON-PATTERSON: Senator Roberti.

17 BOARD MEMBER ROBERTI: There was a point that
18 was just made as far as requirements that just kind of
19 hit me as something that I said earlier and that is the
20 notice has to be in a newspaper of the host jurisdiction,
21 and I think that would include what we would generally
22 call throwaways, just an example that our requirements do
23 not protect the neighboring jurisdictions because quite
24 often -- I don't know what the nice word is -- quite
25 often throwaways are only circulated in the host

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1 jurisdiction. So you can have a neighboring jurisdiction
2 that doesn't see it.

3 I'm throwing that out as just an example.
4 Nobody's fault, but it's one of those loopholes that I
5 wouldn't be surprised is used whenever the opportunity
6 avails itself.

7 BOARD MEMBER JONES: Was it on the NDFE or the
8 Siting Element?

9 BOARD MEMBER ROBERTI: That was on the NDFE,
10 but I'm just saying -- it's symptomatic of the kind of
11 thing that can creep into our notice requirements where
12 we think the notice is adequate but in effect may not be.

13 BOARD MEMBER JONES: Okay. But on the Siting
14 Element, one --

15 MS. CARDOZA: It's majority majority so it must
16 be noticed in all the cities within the county.

17 BOARD MEMBER JONES: So for like L.A. County who
18 used to have an exemption or used to have 5004D or
19 whatever the heck it was, 50000D, now they have to notice
20 and put on each agenda 88 cities for what? For any --

21 MS. CARDOZA: For any Siting Element amendment.

22 BOARD MEMBER JONES: So if somebody was going to
23 go from 200 tons a day to 300 tons a day.

24 MS. CARDOZA: That's one of the decisions the
25 Board will be making next month.

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1 BOARD MEMBER JONES: What I want to know is if
2 today, if it was going from 200 to 300 at a landfill in
3 L.A. County, it would have to amend the Siting Element?

4 MS. CARDOZA: What we would say when we made the
5 conformance finding is that it was inconsistent and it
6 would be up to the Board to determine whether or not it
7 was in conformance.

8 BOARD MEMBER JONES: Okay.

9 MS. CARDOZA: This brings us to the permitting
10 process and when and how do Siting Elements and NDFEs
11 come into the picture, and the answer is at the
12 conformance finding step.

13 Conformance finding, it's a required step by
14 Public Resourced Code Section 50001 and it applies to
15 permits for both new and expanding solid waste facilities
16 that are permitted by the board. It is basically a
17 comparison of the consistency between a proposed permit
18 and facility information in the Siting Element or NDFE.

19 Currently the process starts locally where the
20 permit is heard through which ever approval process the
21 city or county has, and then the applicant provides a
22 statement of conformance to the Local Enforcement Agency
23 who determines whether the statement is correct and
24 includes that information in their permit application
25 package which is submitted to the Board's Permits and

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1 Inspection Division and then the P&I staff as part of
2 their evaluation requests a final conformance finding
3 from the Board's Office of Local Assistance who then
4 compare the proposed permit to the applicable planning
5 document and make the finding of conformance.

6 At the January 1999 board meeting during
7 discussion of a proposed permit, the question of
8 conformance and the interpretation of 50001 was brought
9 up, and as a result of that discussion the Board directed
10 staff to conduct a workshop to gather input from
11 stakeholders on what they saw the correct interpretation
12 of 50001 conformance findings was about.

13 So two meetings actually were held, one in March
14 and one in June of 1999, where the ambiguities in PRC
15 Section 50001 were discussed, as well as a series of
16 options to help resolve the ambiguities. 50001 applies
17 to all jurisdictions at this point since they all have
18 the County Integrated Waste Management plan that states
19 that no person shall establish or expand a solid waste
20 facility in the county unless that facility meets one of
21 the following criteria.

22 The first criterion refers to Siting Elements,
23 and basically it states that the location of that
24 facility must be identified in the Siting Element or
25 amendment for the permit to be in conformance. And the

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1 second section deals with non-disposal facilities that
2 are designed to recover more than 5 percent of incoming
3 volume and those must be identified in the NDFE or an
4 amendment.

5 Several issues were surrounding the conformance
6 finding process and the one most basic to Siting Elements
7 is the question must the proposed disposal facility
8 permit be consistent with the location that's identified
9 for that facility in the Siting Element or must the
10 description of the facility contained in the Siting
11 Element match that in the proposed permit.

12 We have a question of location, and the text of
13 50001 does not -- it refers to location, not description.
14 However, description is implied because of the word
15 expansion of existing facilities and there would be no
16 reason to include this if location identification was
17 sufficient.

18 There's further questions dealing with
19 conformance findings and Siting Elements. For example,
20 what constitutes location is that -- the facility's
21 address. Is it the disposal footprint or some other
22 facility boundary or is it literally is a dot on a map
23 that identifies where the facility is located? Further,
24 the question of what constitutes expansion. Is it a
25 change in the facility's capacity and what kind of

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1 change? A significant one or a particular percent change
2 or is it an increase in the maximum average daily
3 tonnage? Would that be a change in the daily, monthly or
4 yearly tonnage? As far as NDFEs, the question is must
5 the proposed permit be consistent with the facility
6 identification in the NDFE or a description of the
7 facility in the NDFE.

8 Also discussed at the workshops were a series of
9 options. The first known as "dot on a map," which the
10 premise of this option is basically that if the location
11 of the facility is identified in the Siting Element or
12 NDFE, then that is sufficient for that proposed permit to
13 be in conformance with the applicable planning document.
14 This would then mean that only new solid waste facilities
15 that were not identified in a respective planning
16 document would require an amendment. The majority of the
17 stakeholders at the workshops preferred this option.

18 Option two is a variation of option one.

19 BOARD MEMBER JONES: Can I ask --

20 MS. CARDOZA: Depending on how the word
21 expansion is defined. For example, conformance would
22 be --

23 CHAIR MOULTON-PATTERSON: Excuse me. Mr. Jones
24 has a question.

25 BOARD MEMBER JONES: I just had a question with

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1 option one. When it says that only a solid waste
2 facility would require an amendment because of -- you
3 know you were talking about like a new facility, but
4 facilities have -- a lot of facilities have a lot of
5 acreage and they establish a footprint that is going to
6 be the first part of an expansion that might take
7 anywhere -- it may take some number of years, a lot of
8 years, whatever.

9 We're making an assumption here in these boxes
10 that expansion couldn't be -- it couldn't mean just
11 expansion of footprint of a new footprint because why
12 would they have it in there? And I submit that if you
13 get a 600-acre site and you've located it as part of the
14 Siting Element and you're operating on 150 acres of that
15 site, you're going to continually build out that 150
16 acres until -- and let's say that's what was approved.
17 That footprint was approved.

18 The expansion of the site in my view is that
19 next footprint, the next 150, 200, 300 acres. That's an
20 expansion of the footprint within the confines of that
21 acreage, and then I don't think it's a dot on the map.
22 Then I think it's time to let everybody know that okay.
23 The first phase that's been permitted is done, and that
24 phase may take 30 years. Now we're moving into the next
25 phase and everybody needs to know that. But what I'm

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1 reading in here it kind of says, you know, that expansion
2 means if you go from five tons a day to six tons a day.

3 MS. CARDOZA: Actually, that is the option two.
4 If I may continue on that slide, basically option two is
5 stating that it would be a dot on the map if the increase
6 was a tonnage increase or vertical expansion but, for
7 example, it wouldn't be just dot on a map if we're
8 talking about expansion being the footprint. And if
9 that's how we interpreted expansion, then that's option
10 two, a footprint is the definition of expansion.

11 BOARD MEMBER JONES: Okay. Now, prior to
12 something, every permit that came forward had to be in
13 conformance; right? And all the permits that I saw for
14 the first year and a half had said they were in
15 conformance with all these standards. And then I guess
16 it was us accepting these things as -- or changing law

17 that changed it to this thing being interpreted, whether
18 it's describe or expansion, and I'm just not sure what
19 that trigger was because we never had this debate until
20 somebody came forward and said that a law changed or a --
21 Catherine, I don't know which one of many it was.

22 MS. CARDOZA: Once the counties went past --
23 went out of the gap and had their complete Countywide
24 Integrated Waste Management Plan approved by the Board,
25 they went from during the gap, which PRC 5000 applied

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1 which was including location and description, to 50001,
2 which just says location. So since that time this is
3 where this question comes up.

4 BOARD MEMBER JONES: It said -- during the gap
5 it said location and description and then post-gap, which
6 is what we're in now, it just says --

7 MS. CARDOZA: Location identification.

8 BOARD MEMBER JONES: A location which is
9 identified. And I think -- that's good to know because I
10 think that has an awful lot to do with what our debate
11 has been. That is the debate that another one has come
12 forward, and all I'm saying -- when I see it, I
13 appreciate the point of view. I just figured I'd throw
14 another one in there.

15 MS. CARDOZA: Okay. Some further implications
16 from option two would be that the Board would need to
17 define what location identification means. Also,
18 regulations for Siting Elements and NDFEs would need to
19 be revised to require facility boundary information
20 because currently this information is not required. And
21 then subsequently all the Siting Elements would also need
22 to be revised to include footprint and facility boundary
23 information if that's how we decided expansion was
24 because that information is not currently required in the
25 Siting Element. There was little public support for

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1 option two.

2 Option three is another variation of dot on a
3 map and that it would require jurisdictions to revise
4 their Siting Element or NDFE at the five-year review to
5 reflect previous permit revisions. Currently
6 jurisdictions are required to review those elements, but
7 there's nothing that states what would trigger an
8 amendment and this then would clarify that.

9 It would also consolidate updates into a single
10 amendment every five years instead of requiring a permit
11 to be revised -- instead of having the amendment revised
12 every time the permit is revised, and there was no public
13 support for option three.

14 Option four is based on capacity, and the
15 premise is that one would determine conformance of a
16 permit based on if the facility had an impact on the
17 county's remaining disposal capacity. This would
18 require, however, that the permit applicant provide that
19 information on a facility's impact on the remaining
20 capacity at the time the permit application package is
21 submitted, and it would also only apply to Siting
22 Elements. And there was no public support for this
23 option.

24 Option five is description. Basically it states
25 that the facility description in the proposed permit

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1 would have to be consistent with the applicable planning
2 document, and if it was inconsistent then the Siting
3 Element or NDFE would have to be amended prior to
4 concurrence of the permit.

5 To implement this option, the Board would need
6 to define expansion and make a decision as to whether it
7 included hours or days of operation increasing or tonnage
8 or capacity increase or the footprint increasing or some
9 other boundary. Further implications, it would make
10 Siting Elements and NDFEs tracking documents, not just
11 planning documents, and the impact on the county would --
12 on counties would definitely be greater than on cities as
13 we saw that the amendment process is much more lengthy
14 for Siting Elements than NDFEs.

15 Further, if expansion was defined as the
16 footprint, then Board regulations would need to be
17 revised to require that information to be in a Siting
18 Element and again, Siting Elements would also need to be
19 revised. There was little public support for option
20 five.

21 So to summarize, statute does require
22 conformance findings for most new and revised Solid Waste
23 Facility Permits, but there are questions remaining
24 around this process, for example, why is the word
25 expansion in PRC Section 50001 and how should that word

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1 be defined as well as how should location be defined,
2 and as we saw there were impacts from each option, which
3 brings us to the final question. What is the role of
4 planning in conformance findings?

5 You saw that current statute forms a link
6 between a jurisdiction's planning documents and their
7 diversion and disposal facilities, but what is the
8 purpose of that link and how does it fit in with
9 conformance findings.

10 I would like to now introduce our panel --
11 Margaret Rands with the County of Santa Clara, Denise
12 Delmatier representing the waste management industry, and
13 Paul Manasjan representing the Local Enforcement Agency.

14 MS. RANDS: Santa Clara County has a pretty
15 cooperative countywide solid waste planning program and
16 I'm going to tell you how we use the NDFE. We've done
17 five amendments of the NDFE. We really don't do anything
18 with our Siting Element because we have a lot of
19 remaining capacity and there have been no proposals for
20 new solid waste facilities, so most of our activity is on
21 the NDFE.

22 We have probably eight or nine new facilities in
23 our county that are transfer stations, recycling
24 processing facilities, those kinds of facilities, since
25 we adopted our first NDFE. When we prepared that first

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1 document, we prepared it for all of the jurisdictions of
2 Santa Clara County. We the county prepared it for all
3 the cities and the county and the cities then adopted it.
4 The only exception was City of Palo Alto which did its
5 own separate NDFE.

6 When we amend that document, we start with a
7 request from the host jurisdiction to the county telling
8 us that they would like us to amend the NDFE to include
9 whatever facility. We then work with that jurisdiction
10 and the proponent of the project to put together our very
11 simple description of the facility and show us on a map
12 where it's supposed to be located. That's what becomes
13 our NDFE amendment or facility description in our NDFE.

14 The draft goes out for circulation to all the
15 cities for review. It goes to a number of required
16 entities including the Solid Waste Commission of Santa
17 Clara County, and our Solid Waste Commission is ten

18 elected officials which also serve as the local task
19 force under AB 939. So after reviewing comment from the
20 cities, this would be the point where our city reps say
21 what about or I don't understand what they're going to do
22 with this or what kind of materials are they going to
23 take, are they going to take this as well as that. We
24 answer whatever questions the cities bring up in this
25 little one-page description of the facility.

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1 The Solid Waste Commission would then take
2 action and the action required under the law is they
3 provide comments on the facility, and their comments
4 specifically address whether the facility would provide
5 usable, useful recycling services in Santa Clara County.
6 They don't look at what its environmental impacts are,
7 they don't look at any other impacts, just how does it
8 fit into our existing solid waste system.

9 Following that generation of that letter, the
10 NDFE goes to the Board of Supervisors for adoption and
11 also it would be adopted by the city that is the host
12 jurisdiction.

13 From our point of view, the purpose of the NDFE
14 is as a tool for countywide discussion strictly from the
15 countywide solid waste planning point of view. We have
16 other means to look at other kinds of impacts,
17 environmental and other, but this one is specifically a
18 solid waste planning tool. It provides a general
19 description of the facility at one point in time and we
20 don't expect that it's going to describe the facility for
21 every point in time.

22 The NDFE amendment is requested early in the
23 planning process so that obviously our description has to
24 be general in nature. It's generally not already an
25 operating facility.

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1 What we believe the NDFE is not, it is not a
2 permitting or enforcement tool. It is strictly for
3 planning purposes. It's not used to regulate the
4 facility. The permits and the enforcement for the
5 facility are the responsibility of the Local Enforcement
6 Agency and we rely on them to do that process and with
7 the city or the county planning departments who are
8 responsible for assuring that CEQA review happens and
9 those steps are completed.

10 We have a role in the permitting process and
11 that is in providing comments on the Environmental Impact
12 Reports, on the Negative Declaration of environmental
13 impacts. We usually get to see the scoping study when
14 they're first determining whether to do an EIR or a neg
15 dec and we have a chance to suggest permit conditions for
16 the Conditional Use Permit if that's something that we
17 care to do.

18 So we are involved in the actual permitting
19 process for facilities and not just solid waste
20 facilities. In fact, we look at power plants and other
21 kinds of facilities that are being proposed in the county
22 for solid waste implications and ask that those be
23 addressed in the process, but that's completely separate
24 from this NDFE process.

25 MS. JONES: Any comments or questions for

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1 Margaret?

2 CHAIR MOULTON-PATTERSON: Thank you very much.

3 MS. DELMATIER: Good afternoon. My name is
4 Denise Delmatier and I'm with Norcal Waste Systems, and I
5 appreciate the opportunity to appear before the Board
6 this afternoon to discuss this very important and at
7 times very contentious issue.

8 We've been discussing this one since AB 939 was
9 enacted and quite frankly before AB 939 was enacted. I
10 want to just put in context a little bit about how we got
11 to where we are today, and I'm going to have to
12 respectfully disagree with some of the comments made by
13 staff and that's not surprising to some Board Members.
14 With all due respect, sometimes we just merely arrive at
15 different positions and interpretations on existing
16 statute and the intent of existing statute.

17 When we first discussed going forward with AB
18 939, there was a very deliberate negotiation and
19 discussion to in fact de-link the permit process from the
20 planning process, and one of the primary motivations for
21 doing so was prior to AB 939 cities and counties were
22 very frustrated in trying to site facilities, all types
23 of facilities, not just disposal facilities but in
24 particular waste diversion facilities because the
25 facilities were subject to the old CoSWMP approval

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1 process, which is a very lengthy and contentious at times
2 majority majority approval process so that, in fact, if a
3 particular city wanted to site or a particular wanted to
4 site a material recovery facility or recycling facility,
5 they could be, in fact, held hostage -- and this did
6 occur -- could be held hostage over unrelated matters.
7 Any number of cities or a county could stop a recycling
8 facility from being built or planned for or sited.

9 So when we did 939 we had that very concept in
10 mind that we wanted to expedite and give cities and
11 counties, individual cities and counties, local autonomy
12 and self-determination so that they could go forward with
13 the very important recycling facilities and waste
14 diversion facilities that was all about AB 939.

15 What we had then was a planning process in place
16 prior to AB 939, and that would refer to as the pre-gap
17 period, and there we see some language that requires the
18 identification and reservation of areas for facilities.
19 Now again, that was subject to the majority majority
20 approval process.

21 After AB 939 was enacted, we had a gap between
22 the time that you had a Board-approved CoSWMP, County
23 Solid Waste Management Plan, and the time that the Board
24 then had in its possession the Countywide Integrated
25 Waste Management Plan, the new documents under AB 939.

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1 We didn't have in place when 939 was enacted the ability
2 to site any facility in the city and that's when we
3 enacted the gap language. The language during the gap as
4 you can see differs quite substantially from the post-gap
5 language.

6 AB 2296 by Assemblymember Cortese dealt with
7 that important transition from the old system to the new
8 system, and there we find very specifically the
9 requirement for identification and description or found
10 to conform with. I'm going to submit to you that we no
11 longer have a conformance finding at all; and in fact, if
12 you look at the new language the terminology "to conform
13 with" no longer exists.

14 That's why I've entitled this overhead not
15 conformance finding but siting of solid waste facilities.
16 We don't have that language operative in place today. We
17 in fact are in the post-gap period and that language is
18 no longer applicable.

19 What we do have in place then in the post-gap
20 period, now that we're in this new era and do have, in
21 fact, Board-approved Countywide Integrated Waste
22 Management Plans, is much different language where the
23 location of a facility is identified. Dot on the map.
24 When Catherine described at the workshops that were held
25 that included all the stakeholders that there was very

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1 little support for these other proposals, she didn't
2 mention the fact the dot on the map proposal in fact was
3 supported by approximately 25 to one half -- there was a
4 half a vote that differed from the majority of those
5 present in the workshops. That is substantial -- of all
6 the stakeholders, including the environmental community,
7 including cities and counties, including private
8 industry, all of us had worked very diligently and hard
9 on the two bills, the gap bill and AB 2296 Cortese and AB
10 3001 Cortese, and that language was heavily negotiated
11 and heavily debated, but they are significantly
12 different.

13 I want to give credit to Yvonne Hunter for
14 coming up with the old Government Code, which is where I
15 was able to find the language that predates AB 939, and
16 quite frankly, board staff didn't even have the old
17 Government Code and I promised to make copies of that for
18 board staff.

19 I also was asked by Yvonne and I wanted to
20 mention that, that an inquiry for Catherine -- she was
21 concerned about the discussion on the notice in the
22 newspaper and it was her understanding that board staff
23 interpretation of the newspaper notification is a
24 newspaper of general circulation and Catherine, rather
25 than just a daily city general circulation.

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1 That is essentially the position of industry in
2 a nut shell. We've worked on this from the very
3 beginning. It continues to be debated. Quite frankly,
4 plain reading of the language, we're a little bit at awe
5 why we continue to have the discussion really, but if we
6 need to re-visit the issues legislatively that we think
7 that language is very clear in both its intent and the
8 relief of a lot of ambiguity, and that's the position of
9 the industry.

10 I'd be happy to answer any questions.

11 CHAIR MOULTON-PATTERSON: Thank you very much.

12 MS. JONES: Paul.

13 MR. MANASJAN: Good afternoon, Madam Chair and
14 Board Members. My name is Paul Manasjan. I'm with the
15 City of San Diego LEA.

16 I agree with the industry representative that I
17 question even the need for finding of conformance. When
18 you look at the language in the pre-gap period as was
19 discussed by board staff, there's two interesting notes.
20 One that Mr. Jones also made reference to that there was
21 a clear discussion for the need of description in the
22 pre-gap period. You had identification and description,
23 but in addition you also had the requirement for a
24 certification to be made by the Local Enforcement Agency
25 who issues the Solid Waste Facility Permit that a finding

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1 of conformance was made.

2 Now that we're in the post-gap period, that
3 language of description is no longer there. It's very
4 clear in 50001(a) that a solid waste facility needs to
5 either be -- it needs to be identified, solely identified
6 either in the Siting Element if it's a disposal site or
7 in the Non-Disposal Facility Element if it's a diversion
8 facility. This is repeated again and again three other
9 times in regulation, and the type of permits that we
10 oversee under the registration permit, in the language in
11 Title 14 again it says describe -- identify. Under Title
12 14 for the standardized permit, again the laundry list
13 states that it needs to be identified in either one of
14 those plans or documents. And finally in Title 27 for a
15 disposal site it also clearly mentions just to identify.

16 So as far as the LEA is concerned, if a facility
17 is identified in one of those local planning documents,
18 then it meets the completeness criteria for that aspect
19 of the permit application.

20 Further, I think it's interesting to note that
21 in that language of 50001(a) --

22 BOARD MEMBER ROBERTI: Let me --

23 CHAIR MOULTON-PATTERSON: Senator Roberti.

24 BOARD MEMBER ROBERTI: Madam Chair, let me get
25 this clear. You're saying as long as something is

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1 identified -- disposal facility is identified in the
2 Siting Element, that per se satisfies any permitting.

3 MR. MANASJAN: I don't think the LEA has any
4 other choice because the language is so clear.

5 BOARD MEMBER ROBERTI: Conformance finding, and
6 you're taking it one step further that seems to be
7 natural progression and that is that we have no need for
8 conformance findings.

9 MR. MANASJAN: What I'm saying as far as the
10 LEA, when I look at my responsibility as an LEA in
11 reviewing an application package, it's very clear to me
12 in both statute and regulation that all that I have to
13 see is a statement, that I have to verify a statement
14 that the operator provides to me that the facility, if
15 it's a disposal site, is identified. It doesn't say
16 describe. Excuse the pun, but I think the interpretation
17 of expansion is a stretch in this matter.

18 I really don't see how you can get to
19 expansion -- it's obvious that any facility that we're
20 going to review for permit is a new one or it's going to
21 be a revised permit where there's some changes to tonnage
22 or some type of change in the operation that could be
23 considered expansion.

24 Getting back to my point is that why I see, as
25 an LEA, my opinion that these planning documents have

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1 nothing to do -- they're not the Board's documents,
2 they're not the LEA's documents. The intent of them is
3 solely for local jurisdictions to make their diversion
4 plans and also to assess capacity. When you look at the
5 finding that needs to be made in 50001(a), there are two
6 points. One, it either has to be identified -- if it's a
7 disposal site it has to be in the Siting Element, or if
8 it's a diversion facility it has to be in the NDFE. It
9 doesn't talk about -- what about non-diversion solid
10 waste facilities? What about a ten thousand ton a day
11 transfer station?

12 There's no requirement here for this finding of
13 conformance. It does say it has to go before the local
14 task force but it's not listed here. That in my mind
15 shows you that the intent of these documents is to look
16 at diversion and look at ultimate disposal that each
17 jurisdiction is looking at that they have adequate
18 disposal capacity so that they can make plans in the
19 future to deal with their waste.

20 BOARD MEMBER ROBERTI: Madam Chair.

21 CHAIR MOULTON-PATTERSON: Yes. Senator Roberti.

22 BOARD MEMBER ROBERTI: Is the interpretation of
23 Mr. Manasjan and Ms. Delmatier an interpretation of the
24 board staff as generally hereto?

25 MR. SCHIAVO: Board staff's confused by the

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1 language in 50001 primarily because of the term expansion
2 of a solid waste facility and that's what's --

3 BOARD MEMBER ROBERTI: That seems to be the crux
4 of the matter.

5 Let me give you an extreme case. If you have a
6 facility the size of -- the smallest one I've ever seen

7 is the one in Avalon and now suddenly we want to expand
8 it and take in 20 times more and occupy all of Catalina
9 Island. Has that been properly identified by your
10 theory?

11 MR. MANASJAN: I think it's been properly
12 identified because they couldn't just do that by -- they
13 would have to go through the whole CEQA process. We're
14 ignoring a whole 'nother process of review that is much
15 more important than these local planning documents with
16 regard to assessing impacts and the way you assess
17 impacts is through the CEQA process which the NDFE is not
18 subject to. The Siting Element would be, but I don't
19 think that's relevant.

20 Let me give you another example which is a
21 recent example. I brought a permit before this Board two
22 months ago on a composting facility that went ahead and
23 got identified in the NDFE, went through that entire
24 process, which is a lengthy process in and of itself
25 because it has to go before a local task force, a

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1 technical advisory committee which makes the
2 recommendation and then it goes to a citizen's advisory
3 committee -- and all of these are publicly noticed
4 meetings -- and then it goes before the city council to
5 approve its adoption into the Non-Disposal Facility
6 Element and then goes before the Board for your approval.
7 There's four different areas there where there is some
8 type of public review taking place.

9 It went through that process and in doing so in
10 the application they asked what is your current capacity.
11 They stated 10,000 tons per year of green waste. We went
12 through the CEQA process. They anticipated that that

13 would increase to 140,000 tons per year so CEQA was
14 reviewed for 140,000 tons per year of green waste.

15 That permit came before the Board. The issue
16 came up you're not consistent -- you're not in
17 conformance with the NDFE. The NDFE says 100,000 tons
18 per year. You want to do 140,000. It was actually
19 proposed to us so that we would be consistent with the
20 local planning document that the landfill dump the
21 remaining 40,000 tons of clean green curbside collected
22 green waste into the landfill.

23 Now, it seems like the cart is coming before the
24 horse here. What is the whole intent? The intent with
25 AB 939 is to maximize diversion and to do it in a manner

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1 that is environmentally sound and that's not

2 environmentally sound.

3 BOARD MEMBER ROBERTI: Let me give you another
4 case. Back to my Norwalk-Downey situation. We're going
5 to triple the amount of -- I guess in this case it's both
6 recyclable and non-recyclable material.

7 We've looked at the NDFE, is this recyclable
8 material. We're going to triple that and it's going to
9 end up -- we're going to have more trucks come in but
10 remember there's a freeway interchange here so there's
11 really not any greater impact environmentally than was
12 the case before, and of course the trucks are going to be
13 coming through Norwalk and the site is going to be coming
14 through Norwalk. Maybe the people have been notified
15 through a paper of general circulation. They say they
16 haven't.

17 There's going to be a definite expansion of the
18 landfill and we'll carry it one step further, which
19 didn't happen in this case. We're going to expand the
20 property so it abuts the entire river, so everybody
21 across the river in the other city are going to get to
22 see this. Are you saying it's properly identified?

23 MR. MANASJAN: It's certainly properly
24 identified but it's not going to fly unless it goes
25 through the environmental review process.

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1 BOARD MEMBER ROBERTI: Probably goes through the
2 environmental review process because from -- I'm thinking
3 out loud. It probably goes through because you've got to
4 have these things somewhere and they're at an interchange
5 where there is probably a sufficient capacity to not only
6 take care of the trucking but enough vacant land to
7 handle the trash or the -- not trash. It's the
8 recyclable material, whatever we call it.

9 In my mind to always say it's going to -- it's
10 not going to pass CEQA to say that everything goes
11 through CEQA. CEQA takes into consideration very
12 specified environmental matters which aren't always what
13 are contemplated in the permit.

14 MANASJAN: What I would say to you, Senator, is
15 that if we were to rely solely on the Non-Disposal
16 Facility Element where there is absolutely no
17 environmental review required whatsoever, we would be in
18 serious trouble for --

19 BOARD MEMBER ROBERTI: Obviously we have to rely
20 on CEQA as well.

21 MS. RANDS: There are no teeth in the
22 Non-Disposal Facility Element that I've found. It is
23 strictly a planning document. It is not trying to make
24 us look at anything else. When your local task force --
25 the role that is spelled out for the local task force is

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1 merely to look at the facility and say will this be
2 useful in our --

3 BOARD MEMBER ROBERTI: And yes, I appreciate
4 what you're saying. You're making a very interesting
5 case. I don't know if I agree with it because if we
6 follow this line of thinking, yes, the NDFE is relatively
7 weak from your point of view. It will be nonexistent if
8 we follow the line of argument which we're being
9 presented by the panel.

10 MS. DELMATIER: Senator, if I might respond, the
11 thing to keep in mind is this planning document is
12 exactly that. It's a local planning document.

13 As we've discussed all day, there are many other
14 separate processes that deal with and are in fact
15 designed by statute to deal with those specific issues
16 that you've mentioned in your example. That's the CEQA
17 process, that's the Solid Waste Facility Permit process,
18 that's the Conditional Use Permit process, that's the
19 local task force process which is specifically designed
20 to deal with regional impacts of proposed permits.

21 This process is not and was never intended in
22 the debate and discussions through the legislative
23 process to address those issues, and to try and
24 manipulate it into that box provides serious problems.

25 BOARD MEMBER ROBERTI: I think the issue is

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1 whether expansion is a dot on a map or identified, and to
2 me it's very difficult to argue that identification
3 includes expansion because you can get some extreme cases
4 where that's not the case.

5 I would say, however, there is one point that
6 impresses me and that is where you have a Countywide
7 Siting Element to require conformance can force a lot of
8 unnecessary red tape, which I understand, which I had
9 never thought of in prior comments I made at earlier
10 meetings. So there has to be some way in my mind, from
11 my own point of view, of kind of blending the two.

12 MS. DELMATIER: And that's in fact why we broke
13 out the waste diversion facilities from the Siting
14 Element, and the waste diversion facilities are subject
15 to host jurisdiction approval only and not that majority
16 majority approval process because obviously under AB 939
17 we wanted to expedite and encourage the siting of waste
18 diversion facilities.

19 BOARD MEMBER ROBERTI: I hear what you're
20 saying. I still don't think you've covered expansion
21 from the Siting Element. I'm not convinced that the --
22 that identification covers the requirements in the permit
23 even if it's only a planning document.

24 MS. RANDS: We dealt with expansion of an
25 existing solid waste facility, or I guess a change in the

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1 materials they were going to process and accept, but it
2 was not something that we had to do through the Siting
3 Element or NDFE. It didn't come up through those
4 channels anyway. It came in through the LEA's facility
5 processing and the Conditional Use Permit. So we ended
6 up having a pretty significant impact on conditions for
7 the facility but it was through the Planning Commission
8 and the Board of Supervisors in the Conditional Use
9 Permit process rather than this process.

10 I'm not saying that we don't have important and
11 valuable things to say about solid waste and what gets
12 recycled and what doesn't. I think that this document is
13 not where all those really important environmental things
14 are addressed. It's not the mandate of the local task
15 force and it's not the mandate of the Solid Waste
16 Commission in our county, which has a bigger role than
17 the task force does.

18 CHAIR MOULTON-PATTERSON: Mr. Jones, did you
19 have a comment?

20 BOARD MEMBER JONES: I think two comments just
21 real briefly. On Avalon, the example of Avalon --

22 BOARD MEMBER ROBERTI: Say half the island.

23 (Laughter)

24 BOARD MEMBER JONES: But in the Siting Element
25 let's say they identified -- I don't even know how big

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1 Avalon is, so I'm going to say 12 acres. I'm going to
2 say 12 acres just for the sake of this. 12 acres is
3 identified and they're filling at a rate of 50 tons a day
4 and they take their incinerator down and now they're
5 going to fill at a rate of a hundred tons a day. They're
6 still going to do it in that area that's permitted.

7 It's going from 50 to 100. Is that expansion?

8 I think if they say we're going to permit another 12
9 acres here and that's going to be the next step of
10 expansion in our landfill, but that needs to go back
11 through the Siting Element. What you've done, in my
12 view, is you've expanded that footprint and the public
13 needs to know that.

14 If you look at -- one of the things that I was
15 encouraged about when we had this workshop was that we
16 were able to talk about permits, CEQA, Siting Elements
17 and NDFEs because at some point you have to be able to
18 connect the dots as to what is the function of this and
19 what does it do versus the whole picture of things.

20 I think that's why the totality of what all
21 these things mean are important, but when we're talking
22 about compliance issues in front of this Board,
23 conformance issues, if a jurisdiction never identified
24 the tonnage in any facility, they said it's going to take
25 the wastestream from wherever or it's going to take an

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1 average or not even identify a tonnage, just that it's
2 going to take the waste from the county, then there is no
3 problem with conformance finding. It comes in front of
4 us and it has met the test that it is in compliance
5 because there is nothing to put that permit -- that
6 permit against. You know what I mean.

7 There's no -- you haven't identified it at 200
8 tons a day. You didn't do it originally, you're not
9 doing it now, and we've had three of those permits in
10 front of us that we were allowed to do that because they
11 didn't identify. And we've seen countless ones that have
12 come in that were identified -- they put the tonnage in
13 on the day that they were there, the day that they wrote
14 the permit, but I think any time you get off of that map,
15 off of that footprint, which was not only -- you needed
16 it as part of Subtitle D.

17 As part of Subtitle D, any horizontal expansion
18 off an existing footprint had to have been identified to
19 the Water Board as a requirement of Subtitle D, otherwise
20 it had to be constructed to Subtitle D requirements. So
21 people always identified or mostly always identified
22 those footprints.

23 And that's where I just think it's critical
24 because majority majority, two, three, four years because
25 somebody wants to go from 200 tons to 300 tons is like

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1 you said, an awful lot of red tape if it's been
2 identified and it's still within that existing footprint.
3 The fill rate is just different.

4 BOARD MEMBER ROBERTI: Just one last comment. I
5 tend to think -- and I'm just talking off the top of my
6 head now -- that somewhere -- that your example, 200 to
7 300, I understand they have to check with the majority of
8 cities. And take L.A. County, take longer than it takes
9 to fill up the landfill. I understand that, but there
10 are some in my recollection requests that we have heard
11 that aren't 200 to 300, they're much, much more
12 significant.

13 BOARD MEMBER JONES: Even if they're 300 to a
14 thousand.

15 BOARD MEMBER ROBERTI: As Senator Edward Durkson
16 once said, a billion dollars here, a billion dollars
17 there, you're suddenly talking about real money. 100,000
18 tons of trash here and 100,000 tons of trash there and
19 suddenly you've got trash. I would say 300 to a
20 thousand --

21 BOARD MEMBER JONES: But -- okay. 300 to a
22 thousand, what's the process in place that makes sure the
23 public knows about that? It's got to go through, if
24 nothing else, a mitigated neg dec, it's got to get
25 published, it's got to go through the local permitting

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1 process and comes here. It's not like it goes from 300
2 to a thousand without anybody knowing or dealing with it.

3 BOARD MEMBER ROBERTI: I hear you. I don't know
4 if I'm totally convinced.

5 BOARD MEMBER JONES: I wouldn't want to see you
6 totally convinced.

7 (Laughter)

8 MS. JONES: Any other comments or questions for
9 the panel?

10 CHAIR MOULTON-PATTERSON: Thank you very much.
11 Really good discussion.

12 MR. SCHIAVO: Madam Chair, I would like to
13 convey to you that staff was or is proposing to bring
14 forward a consideration item in August dealing with this
15 particular issue, and I just want to find out if there's
16 any additional direction or commentary. Okay.

17 MS. NAUMAN: That concludes the staff's portion
18 of the workshop. We had indicated earlier this morning
19 that there would be an opportunity for general testimony.
20 I don't know how many people who remained in the audience
21 wish to testify. We might want to ask for a show of
22 hands so that we can budget our time accordingly.

23 MS. JONES: How many are interested in providing
24 comment? Just two. Why don't we take -- is it Paul?
25 Mike. And then Dennis.

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1 MR. MOHAJER: Madam Chair, my name is Mike
2 Mohajer. I'm with the Los Angeles County Department of
3 Public Works. I also represent the L.A. County
4 Integrated Waste Management Task Force.

5 I have been waiting for this moment since
6 February of 1998. I was a little bit upset for not even
7 being informed of the meeting today, even though I have
8 been consistently asking for it. But just summarizing
9 basically what was said all day long, that for all
10 practical purposes the language decision belongs to local
11 jurisdictions. That is one of the few actions that is
12 left for a local jurisdiction to make decisions on it.
13 However, in L.A. County we believe -- and I don't talk
14 about the County itself. I'm talking about the County
15 and the 88 cities in Los Angeles County.

16 We believe that in reference to the Siting
17 Element that facility is more than a dot on the map. In
18 our Siting Element we have provided descriptions of the
19 facility and we also, when there is an expansion to an
20 existing facility or a new facility that needs to be
21 sited, we have a finding of conformance process that goes
22 through a local task force. The local task force, as you
23 know, got its members appointed by the League of Cities,
24 by the Board of Supervisors, by the waste industry, by
25 the environmental groups, and also the recycling

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1 industry, as well as an official member.

2 But again, I just want to make a distinction.

3 This is a local jurisdiction at the local level, LTF
4 making the decision. The finding of conformance process,
5 if you look at the -- I really encourage you to look at
6 pages 10 of this handout that I have. It is a very
7 lengthy process that they have to go through and we
8 require the facility operator to conform with a siting
9 criteria that we have, which I mentioned is roughly about
10 64 pages long.

11 We also define what we mean by expansion, and if
12 you look on page 10-2 of my handout, which is a part of
13 the Siting Element which was approved by this Board back
14 in June of '98, the finding of conformance was in that
15 document and at that time the decision was made that they
16 would let the finding of conformance stand without the
17 Waste Board making any decision on it and hoping for it
18 to come back at a later date.

19 We define at the second paragraph under Section
20 10.4, for the purpose of the CSE, significant change is
21 defined as A, any change in the solid waste disposal
22 facility manual for the Conditional Use Permit and/or
23 Waste Discharge Requirement Permit that requires
24 compliance with requirements of the CEQA; B, any revision
25 in the facility's Solid Waste Facility Permit; C, any

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1 increase in daily permitted capacity as defined in
2 Chapter 3 of the CSE.

3 Now again, this was a process that was approved
4 by the majority of the cities in L.A. County containing
5 majority of the incorporated population which was roughly
6 about 97 percent of the countywide population. Now, the
7 reason that we put this finding of conformance process,
8 as Senator Roberti and Board Member Steve Jones
9 mentioned, in L.A. County with the 88 cities obtaining --
10 for any changes to the Siting Element, obtaining the
11 double majority of the cities is a process that is
12 approximately -- for the Siting Element itself took three
13 years. The cost was over a million dollars to get the
14 Siting Element approved.

15 For getting a revision approved to go through
16 the double majority, it's going to be a lengthy
17 process -- based on my personal experience that I have
18 been involved in solid waste and hazardous waste at least
19 for 15 years in L.A. County -- it's probably going to
20 take about two years to get this the Siting Element
21 amended to include some of the items that the staff has
22 indicated in their discussions.

23 So we put this finding of conformance in lieu of
24 the amendment to the Siting Element and have in this
25 local task force, which by the way it has certain

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1 responsibility under 939 to comply and it has also been
2 recognized under the Waste Board regulations, which is --
3 by the way. I should have said that it should have been
4 called out in the first slide of the presentation this
5 morning when you talked about the LEA and the Waste Board
6 roles.

7 If you look at your regulation Title 14,
8 Section 18755.1(c) and (d) very specifically brings the
9 task force and the task force recommendation, and let me
10 read the Code. Section C says the goal -- this is for
11 the Siting Element. The goals shall be consistent with
12 the mandates of the Public Resources Code Section 40051.
13 The goals shall describe the method for the
14 environmentally safe disposal of solid waste generated,
15 so end of Code.

16 And Subsection D says that policies shall
17 specify any programs, regulatory guidance, actions or
18 strategy that may be established to meet the goals
19 described. That is one item that the Waste Board
20 guidelines or guidance to the LEA fails to identify, the
21 requirement at least in Los Angeles County that we have.
22 I would suggest maybe want you want to revisit that
23 issue.

24 Overall in summary again, this is a land use
25 decision of the local jurisdictions. Our finding of

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1 conformance is strictly for the process of taking in lieu
2 of the amendment to the CSE and we recommend that
3 guidance to the LEA to be amended to identify the
4 requirements of the CSE.

5 MS. JONES: Comments or questions?

6 BOARD MEMBER JONES: I have one. When we
7 approved County of Los Angeles's Siting Element or SRRE,
8 there was a very large debate that took place that said
9 under 50000 L.A. County was identified -- it's B, C, or D
10 or something like that -- that says that the task force
11 in fact can do all these things, but I don't think
12 that -- I think we need to have a discussion as to
13 whether or not in 50001, which is what we're dealing here
14 on conformance findings, those same allowances for L.A.
15 County I don't think were included.

16 I remember Jack Michaels sitting in front of
17 this Board pretty nervous that while in fact we could
18 approve all this stuff for L.A. County, that the task
19 force part that was in 50000 doesn't show up anywhere in
20 50001, which would mean -- I think we need to have a
21 discussion about it at some point, but it would seem to
22 me that what that means then is you go back to majority
23 majority, not the local task force signing off on
24 everything.

25 MR. MOHAJER: Mr. Jones the issues you indicated

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1 was brought up many times, and as I said, I have been
2 waiting since February of '98 to address this issue. We
3 met -- the L.A. County, County Council met with Mr. Block
4 and typical of the lawyers they always say just agree.
5 Now as mentioned, going back to the Government Code,
6 Government Code that the CoSWMP was operating under and
7 had the requirement of identifying and describing, and
8 that process of defining a conformance under the
9 Government Code was approved which is more restrictive
10 than 50001, was approved and it's kind of difficult for
11 me to believe that now you have only identify rather than
12 describe. It makes it more restrictive, it just doesn't
13 make sense.

14 I have been involved with the CoSWMP, L.A.
15 County CoSWMP, and I had to go through the process of
16 getting that one amended back in 1984 and '85. It took
17 two and a half years for that process.

18 BOARD MEMBER JONES: But there are no more
19 CoSWMPs.

20 MR. MOHAJER: It's gone.

21 BOARD MEMBER JONES: It's history. And that's
22 all I'm bringing up is because you're endorsing something
23 that if these regulations don't allow L.A. County to
24 operate with just that little task force, then you've got
25 to go back to majority majority.

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1 MR. MOHAJER: Mr. Jones, what I said, I said the
2 Government Code, the old finding of conformance under the
3 CoSWMP was operating was more restrictive. Identify and
4 describe. The new 50000(a) that the COAM operates under,
5 it just requires to identify. So it is less restrictive.
6 And then I put the question to the counsel again. More
7 restrictive the finding of conformance was approved by
8 the former Waste Board, and the new one that is less
9 restrictive cannot. That's something between the lawyers
10 can argue.

11 BOARD MEMBER JONES: We can't seem to get
12 concurrence anyway, so what's the difference.

13 MS. JONES: Any other questions?

14 CHAIR MOULTON-PATTERSON: Thank you.

15 MR. MOHAJER: Thank you.

16 MR. FERRIER: Good afternoon, Board Members and
17 Madam Chair. I'm going to try to keep my comments really
18 brief.

19 I just wanted to bring to your attention a few
20 items that I thought might be helpful in fleshing out the
21 intent of the Section 50001. I have a copy that I
22 discovered in an old archive of a legal transcript of the
23 workshop on AB 939 in 1989. There were some comments in
24 this, the discussions over conformance finding and the
25 intent were discussed at that time in 1989.

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1 The section that they were concerned with,
2 50001, was not substantially altered. They did put in a
3 description requirement but the description in 50001FC, I
4 believe it is, requires that description to be sent to
5 the task force so that they have information. It does
6 not require that it be included in the plan.

7 If you'll bear with me, I'd like to just run
8 through these comments and hit the high points so that
9 you know what the Executive Officer and the General
10 Counsel of the Board at that time said on this topic.

11 The comment by George Larsen, "There's a problem
12 in the linkage between the newly created County
13 Integrated Waste Management Plans and the facility siting
14 process in California. There is a requirement in
15 existing law that any facility to be sited in a county or
16 city or a jurisdiction or a district has to be found --
17 determined to be in conformance not only with the general
18 plan but with that county's Solid Waste Management Plan,
19 soon to be called the Integrated Waste Management Plan.
20 That linkage no longer exists after January 1, 1990.

21 "I think that the county people particularly
22 ought to be very well aware of this to some extent.
23 There's going to be a loss of authority over who's going
24 to be siting what in your county. I think we will -- I
25 think we need to address that."

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1 The comment goes on to a question-and-answer
2 period at the end of the workshop. Ms. Yvonne Hunter,
3 League of California Cities. She goes on and says, "I'd
4 like to return to the CoSWMP question," and I guess this
5 is where George Larsen or perhaps Bob Konnheim, Chief
6 Counsel. "I've received a number of calls from a number
7 of cities and in fact some counties inquiring about this
8 gap, the period of time. I guess it's never-never land
9 between when the CoSWMP January 1 no longer exists when
10 the plan -- the Integrated Waste Management Plan is
11 submitted and adopted. What happens if a city want to
12 site a transfer station, material recovery facility?"

13 She goes on to say, "Obviously it's a local land
14 use decision." Attorney Konnheim responds and says --
15 I'm going to cut down to his comment. I'm taking out of
16 context but this is available if anybody wants to read
17 it. "There is an intent as the process develops not to
18 have, once County Integrated Waste Management Plans are
19 adopted and right, not to have the same kind of
20 conformance finding process. So the question really is
21 not what happens during the transition. You need to know
22 that not only are CoSWMPs out of the law, but as I've
23 been told by a number of people who have been my ear when
24 I tried to construct creatively some kind of a
25 transition, there is an intent in the law. And this is

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1 not my evaluation of it but I agree with it because I can
2 read the law that there is to be no more conformance
3 finding."

4 After that, Mr. Steve Samaniego with the at that
5 time Riverside County LEA asked the question. He said,
6 "That raised another question I've been wanting to ask.
7 Will the Board still be able to process and see the
8 processing of proposed permits brought to the Board from
9 the LEAs without that conformance finding?"

10 Attorney Konnheim responded. "Under the new
11 law, the Board's responsibilities for the processing of
12 permits I think are fairly clear. The Board is required
13 again to concur, object, and to review them all for the
14 engineering and environmental health criteria that are in
15 the law. The Board is empowered to continue to do that.
16 What it appears that the Board is not empowered to do is
17 to attempt to link a permit or to base its decision of
18 concurrence or non-concurrence on any analysis of whether
19 that proposed facility conforms to an existing County
20 Integrated Waste Management Plan Siting Element."

21 There was one further comment on the subject
22 when a Ms. Laytola from the County of San Diego raised
23 the issue again. She said, "What Mr. Konnheim said
24 earlier about his understanding of the intent being that
25 the new Board would not ever find conformance anymore on

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1 siting kind of scared me because I looked again at the
2 Siting Element that has to be prepared these plans, and I
3 don't understand why we have to waste our time preparing
4 a Siting Element that talks about appropriate places to
5 site facilities if nobody is going to worry about if a
6 new site conforms to the plan or not."

7 General counsel responded that -- Attorney
8 Konnheim, "That's a good point. It's not in the law."

9 Subsequent to this workshop there were three
10 bills that were passed to amend the Public Resources Code
11 and this section and there was only one item that I can
12 see that -- they had many opportunities is my point.
13 They had many opportunities in those three bills if their
14 intent was to make any kind of conformance finding or
15 conformance finding with the county plan that included a
16 description of conformance, to include that in those
17 subsequent bills.

18 None of those included that and, in fact, the
19 only section that responds to it is 50000(a)(2)(c) which
20 says, "The person or agency proposing to establish a
21 solid waste facility shall prepare and submit a site
22 identification and description of the proposed facility
23 to the task force established pursuant to 40950."

24 There's no requirement to include a description
25 in the Integrated Waste Management Plan, Siting Element,

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1 NDFE. There's no apparent clause that I can find or
2 section that speaks to holding up a permit process that
3 is going to allow us to meet our 50 percent recycling
4 goal.

5 I don't understand why we have to create these
6 processes that serve more as a barrier to siting a
7 composting facility, a recycling facility when the whole
8 motive is to try to increase diversion and increase
9 recycling. It seems counterproductive.

10 I appreciate your time at the end of the day to
11 listen. If you have any comments, I'll be here.

12 CHAIR MOULTON-PATTERSON: Thank you very much.

13 MS. NAUMAN: I think that pretty much does it.
14 We have your direction on the PEP policy to come back.
15 Pat I believe has his direction on a conformance item to
16 come back. I haven't noted any other specific direction
17 from you today.

18 If there is any further direction, I will be
19 happy to take it now. Otherwise we will be preparing for
20 the session on August the 9th.

21 CHAIR MOULTON-PATTERSON: Well, I would just
22 like to thank everyone. I know a lot of work went into
23 this and it certainly has helped me and I think there's
24 been a lot of clarification, so thank you very much for
25 all your work. Jill, thank you.

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1 MS. JONES: Also, we have an evaluation that we
2 would like to get some feedback from you so that the
3 August session we can make some improvements and find out
4 what went well for you today. So we would appreciate
5 your comments.

6 CHAIR MOULTON-PATTERSON: Thank you.

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4 I, Terri L. Emery, CSR 11598, a Certified
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6 do hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
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10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place
12 at the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

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19 EXECUTED this 13th day of August, 2000.

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